NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. COMMERCE, PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

PREAMBLE

1. **Sections Affected** / **Rulemaking Action**

R4-1-341	Amend
R4-1-341.01	Amend
R4-1-342	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. §§ 32-703 and 41-1072 et seq.

   Implementing statute: A.R.S. §§ 32-721, 32-723, 32-727, and 32-729

3. **The effective date of the rules:**

   September 24, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**

   Notice of Rulemaking Docket Opening: 3 A.A.R. 327, January 31, 1997

   Notice of Proposed Rulemaking: 3 A.A.R. 262, January 31, 1997

   Notice of Supplemental Proposed Rulemaking: 3 A.A.R. 1314, May 16, 1997

   The record was closed July 14, 1997

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

   Name: Ruth R. Lee, Executive Director

   Address: Accountancy Board
   3877 North 7th Street-106
   Phoenix, Arizona 85014

   Telephone: (602) 255-3648, ext. 18

   Fax: (602) 255-1283

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

   In 1995, the Arizona Legislature enacted A.R.S. § 41-1073 which requires agencies that issue licenses to adopt by rule an overall time-frame during which the agency will either grant or deny the type of license that it issues. The Arizona State Board of Accountancy has adopted these rules regarding the overall time-frame as mandated by this legislation. The rule (A.A.C. R4-1-341) sets forth the time-frames for completing the Administrative Completeness Review and the Substantive Review. Adoption of these rules will benefit both the public and the certified public accounting profession. They will enable the professional to be informed about the requirements necessary for certification in Arizona and will protect the public by ensuring that the professional has met the standards for licensure in a timely manner. In addition, the rules will expedite the certification process.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

   This rule will impact the applicants for licensure because it requires a fee of $100. If an employer chooses to cover the cost because of the benefit to the entity, it will impact business - small or large. The amount of $100 for 1 or 2 employees would not be significant enough to impact the consumer. Small businesses may be affected once a person becomes certified by having to reward a newly certified employee with an increase in salary; however, it may then make it possible to charge more for any accounting services provided by a certified public accountant. The consumer would more likely be affected by the actual licen-

sure as opposed to the fee being charged to accomplish the fact.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
The significant changes made between the proposed and final rules were to reduce the certification overall time-frame initially proposed from 300 days to 180 days.

10. **A summary of the principal comments and the agency response to them:**
The Governor's Regulatory Review Council staff's preliminary/informal review had raised concern with the length of time originally proposed for compliance with A.R.S. § 41-1072 et seq. After the 1st hearing held March 10, 1997, and after the informal review, the Board made subsequent changes in the proposed rules and scheduled a hearing for July 7, 1997. The Board received 2 letters with comments: 1 requesting more expeditious processing of the application and the other noting the lack of information about foreign reciprocity. The Board members are in agreement that the time-frame is appropriate, given the committee and Board reviews. The 2nd letter did not directly address the time-frame issue. There were no registrants or members of the public present for oral discussion.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

12. **Incorporations by reference and their location in the rules:**
None.

13. **Was this rule previously adopted as an emergency rule?**
No.

14. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 1. BOARD OF ACCOUNTANCY

ARTICLE 3. CERTIFICATION AND REGISTRATION PROVISIONS

Section
R4-1-341. CPA certificates; by examination
R4-1-341.01. CPA certificates; by non-Arizona examinee
R4-1-342. CPA certificates; by reciprocity

ARTICLE 3. CERTIFICATION AND REGISTRATION PROVISIONS

R4-1-341. CPA certificates; by examination

A. Application: Upon passing all parts of the examination prescribed by A.R.S. § 32-723(C) at 1 sitting or within the 3-year period prescribed by R4-1-229, a candidate believing himself or herself to be otherwise qualified under A.R.S. § 32-721, may apply for a certificate of certified public accountant. ~~The application form is incorporated herein by reference and is on file with the Secretary of State and may be obtained from the office of the Board.~~ The candidate shall complete an application packet as prescribed by the Board. The application packet shall include the following information: applicant's background, personal data and photograph; examination scores; education and work history; university or college transcripts to confirm that the bachelor's degree and requirements have been completed; employer(s) name, address and telephone number; authorization for investigation; and affirmation of truthfulness.

B. Application fee: ~~No fee is required with applications filed under this Section.~~ The application fee for a certificate by examination is $100.00.

C. Examination: Each applicant for a certificate of certified public accountant shall ~~be required to~~ pass an examination in Professional Ethics as prescribed by the Board.

D. An applicant for certification shall submit an application package containing the following items to the Board Office:
1. A completed application form signed by the applicant and notarized;
2. Other information required by the Board as set forth in subsection (A) necessary to determine the applicant's eligibility; and
3. The application fee.

E. Within 30 days of receiving an application package, the Board shall notify the applicant that the package is either complete or incomplete. If the applicant submits the items set forth in subsection (D) during the month the Board establishes the last day to file applications for examination or the subsequent month, the Board shall have an additional 60 days to notify the applicant that the package is either complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
1. Service of any written notice shall be completed in accordance with R4-1-117(F)(1)(2) and (3). Pursuant to R4-1-455.03(F), the applicant has 30 days to respond to the Board's request for additional information. If the applicant fails to timely respond to the Board's request, the Board may close the file. An applicant whose file has been closed and who later wishes to become certified, shall apply anew.
2. Within 60 days of receipt of all the missing information, the Board shall notify the applicant that the application package is complete.
3. The Board shall not process an application for certification until the applicant has fully complied with the requirements of subsection (D).
4. The Board shall issue a certification decision no later than 150 days after receipt of a completed application package. The date of receipt is the postmark date of the notice advising the applicant that the package is complete.
5. If the Board finds deficiencies during the substantive review of the application, the Board may issue a written request to the applicant for additional information.
6. The 150-day time-frame for a substantive review for the issuance of a certificate is suspended from the date of the written request for additional information pursuant

to subsection 5 until the date that all information is received. Service of any written notice shall be completed in accordance with R4-1-117(F)(1)(2) and (3). Pursuant to R4-1-455.03(F), the applicant has 30 days to respond to the Board's request for additional information. If the applicant fails to timely respond to the Board's request, the Board shall finish its substantive review based upon the information the applicant has presented.

7. When the applicant and the Board mutually agree in writing, the substantive review time-frame may be extended in accordance with A.R.S. § 41-1075.

F. When the Board denies an applicant's request for certification, the Board shall send the applicant written notice explaining:
   1. The reason for denial, with citations to supporting statutes or rules;
   2. The applicant's right to seek a fair hearing to challenge the denial; and
   3. The time periods for appealing the denial.

G. With the exception in subsection (E), the Board establishes the following licensing time-frames for the purpose of A.R.S. § 41-1073:
   1. Administrative completeness review time-frame: 30 days;
   2. Substantive review time-frame: 150 days; and
   3. Overall time-frame: 180 days.

R4-1-341.01. CPA Certificates; by Non-Arizona Examinee

A. Application: An applicant for certification who sat for the CPA examination, as prescribed by A.R.S. § 32-723(C), outside of Arizona, passed all parts of the CPA examination at 1 sitting or within the 3-year period prescribed by R4-1-229, and who believes himself or herself to be otherwise qualified under A.R.S. § 32-721 shall ~~apply for a certificate of certified public accountant on a form prescribed by the Board which shall include the following information: applicant's background information, personal data, and photograph; examination scores; education and work history; employer's name, address and telephone number; authorization for investigation; and affirmation of truthfulness. The applicant shall cause to be forwarded to the Board office Registrar certified or the equivalent university or college transcripts to confirm that the Bachelor's degree requirements have been completed.~~ comply with the application requirements as set forth in R4-1-341.

B. Application fee: The application fee for a certificate by a non-Arizona examinee is $100.00.

C. Examination: Each applicant for a certificate of certified public accountant shall ~~be required to~~ pass an examination in Professional Ethics as prescribed by the Board.

D. The provisions set forth in R4-1-341(A), (D), (E), (F), and (G) apply to non-Arizona examinees.

R4-1-342. CPA certificates; by reciprocity

A. Application: A person desiring a certificate as a certified public accountant in ~~this state~~ Arizona on the basis of a certificate in another state, under A.R.S. § 32-727, ~~must send a completed form 5 to the Board, which is incorporated by reference herein and on file with the Office of Secretary of State~~ shall comply with the application requirements as set forth in R4-1-341.

B. Application fee: The application fee for a certificate by reciprocity is ~~$50.00~~ 100.00.

C. Examination: Each applicant for a certificate of certified public accountant shall pass an examination in Professional Ethics as prescribed by the Board.

D. The provisions set forth in R4-1-341(D), (E), (F), and (G) and the application packet requirements set forth in R4-1-341(A) apply to applicants seeking certification by reciprocity.

NOTICE OF FINAL RULEMAKING

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

PREAMBLE

1. **Sections Affected** / **Rulemaking Action**

R5-4-101	New Section
R5-4-102	Repeal
R5-4-102	New Section
R5-4-201	New Section
R5-4-301	New Section
R5-4-302	New Section
R5-4-502	Repeal
R5-4-503	Repeal
R5-4-601	Repeal
R5-4-602	Repeal
R5-4-603	Repeal
R5-4-705	Repeal
R5-4-807	Repeal

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

   Authorizing statute: A.R.S. §§ 31-401 and 31-402

   Implementing statues: A.R.S. §§ 31-415, 31-417, 31-442, 38-431.01, 41-1604.11(G), and 41-1604.13(G)

3. **The effective date of the rules:**
   September 22, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**
   Notice of Rulemaking Docket Opening: 2 A.A.R. 1314, March 22, 1996
   Notice of Proposed Rulemaking: 3 A.A.R. 342, February 7, 1997
   Notice of Supplemental Proposed Rulemaking: 3 A.A.R. 1318, May 16, 1997

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Gail Kelsey
Address:	Board of Executive Clemency 1645 West Jefferson, Room 326 Phoenix, Arizona 85007
Telephone:	(602) 542-5656 ext. 237
Fax:	(602) 542-5680

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
   Since the Board does not conduct parole hearings on inmates who commit an offense after January 1, 1994, these rules explain the current operation of the Board. The implementation of these rules explains the affect on persons other than the inmate. There are rules that the board will be repealing, since they are exempt pursuant to A.R.S. § 41-1005.7.

   R5-4-101, Definitions. Defines all terms used throughout the rules.

   R5-4-102, Public Comment at Board Hearings. This rule explains public participation at a Board hearing.

   R5-4-201, Pardon. This rule explains the process in which an eligible individual may apply for a pardon.

   R5-4-301, Rescission Hearings. This rule explains the Board's hearing process when a request has been submitted to the Board to rescind a previous decision made by the Board.

   R5-4-302, Revocation Hearings. This rule explains the Board's hearing process when it has been alleged that an inmate has violated conditions of release.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
   Not applicable.

8. **The preliminary summary of the economic, small business, and consumer impact:**
   Persons who will be directly affected by the proposed rule making will be the officials and victims that request to be notified of the status of inmates and parolees. The agency, DPS, FBI and any individual seeking an executive clemency action will bear some cost from the implementation of these rules. There will be no impact to small businesses, private or public employment business, agencies or political subdivisions.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
   R5-4-101 Definitions. "Street time", the words "work furlough", and "home arrest" were removed throughout this definition. The Board only has authority to revoke street time when an inmate is on "parole" status. "Warrant", the language "Board or any member thereof" was inserted, and the word "parole officer" was deleted, since the Department of Corrections and members of the Arizona Board of Executive Clemency have the authority to issue a warrant for an inmate's alleged violation.

   R5-4-301 Rescission Hearings. Section (A) deleted the language "a Parole Officer" and inserted the language "Board or any member thereof". R5-4-301(A)(4) this sentence was rewritten to read "Accurate or complete information was not available to the Board when release was granted."

   R5-4-302 Revocation Hearings. Section (A) deleted the language "a Parole Officer" and inserted the language "Board or any member thereof". R5-4-302(D)(1) deleted the language "the warrant of arrest be quashed" and the word "shall".

10. **A summary of the principal comments and the agency response to them:**
    The agency did not receive any comments from the public regarding these rules, the changes that were made to the rules were a result of suggested changes requested by the Board members.

12. **Incorporations by reference and their location in the rules:**
    Not applicable.

13. **Was this rule previously adopted as an emergency rule:**
    No.

14. **The full text of the rules follows:**

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

ARTICLE 1. GENERAL PROVISIONS

Section
R5-4-101. Definitions
~~R5-4-102.~~ ~~Definitions~~
R5-4-102. Public Comment at Board Hearings

ARTICLE 2. EXECUTIVE CLEMENCY ACTIONS

Section
R5-4-201. Pardons

ARTICLE 3. REVOCATION

Section
R5-4-301. Rescission Hearings
R5-4-302. Revocation Hearings

~~ARTICLE 5. PAROLE REVOCATION~~

Section
R5-4-502. ~~Preliminary Hearings~~ Repealed
R5-4-503. ~~Revocation Hearing Process~~ Repealed

~~ARTICLE 6. EXECUTIVE CLEMENCY ACTIONS~~

Section
R5-4-601. ~~Pardon~~ Repealed
R5-4-602. ~~Commutation of Sentence~~ Repealed
R5-4-603. ~~Reprieve~~ Repealed

~~ARTICLE 7. OTHER BOARD ACTIONS~~

Section
R5-4-705. ~~In absentia hearings~~ Repealed

~~ARTICLE 8. WORK FURLOUGH~~

Section
R5-4-807. ~~Work Furlough Revocation~~ Repealed

ARTICLE 1. GENERAL PROVISIONS

R5-4-101. Definitions

In this Chapter, unless otherwise specified:

1. "Applicant" means an individual who asks the Governor to grant a pardon.
2. "Board" means the Arizona Board of Executive Clemency (formerly the Arizona Board of Pardons and Parole).
3. "Department" means the Department of Corrections.
4. "Inmate" means an individual who is in the custody of or under the jurisdiction of the Department, including individuals on parole, home arrest, work furlough, or community supervision.
5. "Pardon" means an action by the Governor that absolves an applicant of the legal consequences of the crime for which the applicant was convicted.
6. "Presiding Officer" means either the Chairperson of the Board or the Chairperson of a Board panel assigned to conduct a hearing.
7. "Rescission" means to void a release decision that was previously granted by the Board.
8. "Request to rescind" means a document asking the Board to void a decision to grant an inmate a release.
9. "Revocation" means an act by the Board to terminate an inmate's release status.
10. "Street time" means from the time an inmate accepts parole until the time parole is revoked or completed.
11. "Warrant" means a document of written allegations issued by the Department, initiated by the Department or Board or any member of the Board on an inmate who is alleged to have violated condition(s) of release.
12. "Work day" means Monday through Friday of each week except federal and state holidays.

R5-4-102. ~~Definitions~~ Repealed

~~The meaning of these words and terms as used in these articles shall be limited to the following:~~

1. ~~"Board" - Arizona Board of Pardons and Paroles.~~
2. ~~"Chairman" - member who has been elected by the Board to preside and act as spokesman.~~
3. ~~"Member" - person duly appointed by the Governor and confirmed by the Senate to serve on the Board.~~
4. ~~"Department of Corrections" - agency responsible for State correctional institutions, parole supervision, interstate compact agreements, time computations, eligibility certification and any other responsibilities mandated by law. This agency is headed by a Director, appointed by the Governor and confirmed by the Senate.~~
5. ~~"Inmate" - any prisoner under the jurisdiction of the Department of Corrections in an institution.~~
6. ~~"Parolee" - any inmate who has been released on parole by the Board and is under the supervision of the Department of Corrections.~~
7. ~~"Vice chairman" - member of the Board who assists the Chairman and serves on a rotation basis.~~
8. ~~"Parole" - a conditional release from incarceration allowing the individual to serve the remainder of his sentence outside the institution if he abides by specific conditions.~~
9. ~~"Parole to a detainer" - conditional release to another jurisdiction.~~
10. ~~"Parole to consecutive sentence" - conditional release from a specified sentence granted an inmate serving consecutive sentences allowing him to begin serving time on the next sentence while he remains incarcerated.~~
11. ~~"Warrant" - document that specifies alleged violations of parole served to a parolee notifying him he is to appear as requested.~~
12. ~~"Preliminary hearings" - initial hearing held to determine if there is probable cause to believe that a violation of parole has occurred.~~
13. ~~"Revoke" - to order an individual changed from parole status to returning him to the institution as a result of violating the condition(s) of his parole.~~
14. ~~"Reinstatement" - to allow an individual whose parole has been revoked to return to parole status.~~
15. ~~"Rescind" - to void an order of a Board action previously taken.~~
16. ~~"Street time" - is from the time a person accepts parole until the time parole is revoked or completed.~~
17. ~~"Executive clemency" - constitutional power given to the Governor allowing him authority to grant commutation, pardons and reprieves for all offenses except treason and cases of impeachment upon such conditions and with such restrictions and limitations as may be provided by law. These actions may only be granted upon recommendation by the Board.~~

~~18. "Attorney General" chief legal counsel for the Board an authority on Arizona's Revised Statutes and Constitution.~~
~~19. "In absentia hearings" a properly convened hearing held involving an individual who is not physically present.~~
~~20. "Waiver" the voluntary relinquishment of some right(s).~~
~~21. "Old Code(s)" applies to persons whose crimes were committed prior to October 1, 1978.~~
~~22. "New Code" applies to persons whose crimes were committed on or after October 1, 1978.~~

R5-4-102. Public Comment At Board Hearings

During any hearing conducted by the Board, the Presiding Officer may allow any person to provide oral or written information relevant to the hearing.

ARTICLE 2. EXECUTIVE CLEMENCY ACTIONS

R5-4-201. Pardon

A. Unless prohibited by law, an individual who has been convicted of a felony offense in Arizona may apply for a pardon if the judgment of guilt or conviction has not been vacated or set aside by a court.
B. To request a pardon, an individual who is not an inmate shall submit to the Board a completed pardon application obtained from the Board. The Board, at its discretion, may require the applicant to submit additional information and documents.
C. To request a pardon, an inmate shall submit to the Department a completed pardon application obtained from the Board. The Department shall review the application and verify whether the inmate is eligible to apply for a pardon. The Board, at its discretion, may require the applicant to submit additional information and documents.
D. After an eligible applicant has completed all application requirements, the Board shall schedule a hearing and notify the applicant in writing of the date and time of the hearing.
E. At the hearing, the Board shall take 1 of the following actions:
    1. Vote to deny the request for a pardon and notify the applicant in writing of the Board's decision within 10 work days. The applicant is not eligible to re-apply for a pardon for 3 years from the date that the pardon is denied.
    2. Vote to recommend to the Governor that a pardon be granted and notify the applicant in writing of the Board's decision within 10 work days.
F. If the Board votes to recommend a pardon, Board members who voted in the affirmative shall prepare and send to the Governor a letter of recommendation, including reasons for the Board's recommendation. Letters of dissent may be prepared by the dissenting Board members and sent to the Governor.
G. If the Board's recommendation is denied by the Governor, the applicant shall be notified in writing by the Board when the decision is known. The applicant is not eligible to re-apply for a pardon for 3 years from the date that the pardon is denied.

ARTICLE 3. REVOCATION

R5-4-301. Rescission Hearings

A. To initiate the rescission process, the Department, the Board, or any member of the Board shall submit a request to rescind to the Board. A request to rescind may be submitted for:
    1. Alleged violation of law by the inmate,
    2. Alleged violation of discipline rules of the Department by the inmate,
    3. Alleged inability of the inmate to meet a condition of release, or
    4. The lack of accurate or complete information available to the Board when the release decision was granted.
B. After the Board has a completed request to rescind that includes a list of all documents, items of evidence to be submitted, and witnesses who will be called to testify, the Board shall schedule a rescission hearing and shall provide timely notice of the rescission hearing to the inmate and the Department.
C. The rescission hearing shall be conducted by the Board. Before the start of the rescission hearing, the inmate may request that the hearing may be continued for good cause. If the Board finds that good cause exists, the Board shall grant the request for continuance. Good cause includes but is not limited to:
    1. The inmate wants to obtain legal representation;
    2. The inmate did not receive timely notification of the hearing; and
    3. The inmate lacked opportunity to question adverse witnesses, supportive witnesses, or the parole officer or Department officer who initiated the request to rescind.
D. At the close of the rescission hearing, the Board shall take 1 of the following actions:
    1. Find that the allegations in the request to rescind are not true and dismiss the request to rescind. The Board's previous decision to grant release to the inmate will stand.
    2. Find that 1 or more of the allegations in the request to rescind are true and void the Board's previous decision to grant release to the inmate. The inmate shall be held in the custody of the Department as provided by law.
    3. Find that 1 or more of the allegations in the request to rescind are true, however, allow the Board's previous decision to grant release to the inmate stand.

R-4-302. Revocation Hearings

A. To initiate the revocation process, the Department, the Board, or any member of the Board shall request that the Department issue a warrant alleging that an inmate violated a condition of release.
B. After the Department submits a warrant that provides to the Board a list of all documents, items of evidence to be submitted, and witnesses who will be called to testify, the Board shall schedule a revocation hearing and shall provide timely notice of the revocation hearing to the inmate and the Department.
C. The revocation hearing shall be conducted by the Board. Before the start of a revocation hearing, the inmate may request that the hearing be continued for good cause. If the Board finds that good cause exists, the Board shall grant the request for continuance. Good cause includes but is not limited to:
    1. The inmate wants to obtain legal representation;
    2. The inmate did not receive timely notification of the hearing; and
    3. The inmate lacked opportunity to question adverse witnesses, supportive witnesses, or the parole officer who initiated the warrant of arrest.
D. At the close of the revocation hearing, the Board shall take 1 of the following actions:
    1. Find that the allegations in the warrant are not true and direct, in writing, to the Department that the inmate be

returned to parole, home arrest, work furlough, or community supervision status.

2. In the case of an inmate on parole, find that 1 or more of the allegations in the warrant are true and revoke the inmate's release status, but place the inmate on home arrest. The inmate shall be held by the Department pending release on home arrest.
3. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that 1 or more of the allegations in the warrant are true but reinstate the inmate's release status with or without additional conditions.
4. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that the allegations in the warrant are true and direct that the inmate's release status be revoked. The inmate shall revert immediately to secure custody and be held by the Department in that status as provided by law.

E. If an inmate's parole status is revoked, the Board may require the forfeiture of some or all street time credits earned by the inmate while on release.

~~ARTICLE 5. PAROLE REVOCATION~~

R5-4-502. ~~Preliminary hearings~~ Repealed

~~An initial hearing is held to determine if there is probable cause to believe the parolee has violated condition(s) of his parole.~~

1. ~~A hearing officer conducts this hearing in the jurisdiction where the alleged violation occurred.~~
2. ~~The parolee is given an opportunity to speak on his behalf and may be represented by legal counsel.~~
3. ~~Friends, family and other witnesses are allowed to speak concerning the parolee.~~
4. ~~The parolee may request the presence of persons who have given adverse information on which a parole violation is to be based and cross examine those persons.~~
5. ~~The hearing officer collects all the facts presented and decides if there is probable cause to believe a violation has occurred.~~
6. ~~A parolee is continued on parole status when it is determined that no probable cause exists.~~
7. ~~When it is determined that there is probable cause to believe a violation has occurred, the parolee is remanded to the custody of the Department of Corrections to await a parole revocation hearing by the Board of Pardons and Paroles, after the disposal of any and all charges pending against him.~~

R5-4-503. ~~Revocation hearing process~~ Repealed

~~A. The parolee is notified in writing of this hearing date.~~
~~B. The parolee is granted a hearing before the Board and is interviewed as to the alleged parole violation(s).~~
~~C. Input from family and other witnesses is considered.~~
~~D. Representation by legal counsel is allowed.~~
~~E. The Board makes its decision and notifies the parolee and the Department of Corrections.~~
~~F. Those believed not in violation are allowed to continue serving their parole in society.~~
~~G. Persons found in violation of their parole may be subject to forfeiture of street time and may be remanded to the custody of the Department of Corrections.~~

~~ARTICLE 6. EXECUTIVE CLEMENCY ACTIONS~~

R5-4-601. ~~Pardon~~ Repealed

~~A. This action granted by the Governor only after a recommendation by the Board, absolves the convicted felon the legal consequences of his crime and conviction.~~
~~B. Application process: Several steps must be followed before the individual can be heard by the Board. This process may take one (1) year to complete at which time the Board reviews the case and interviews the applicant.~~
~~C. Eligibility: Anyone who has been convicted of a felony in the State of Arizona may apply.~~
~~D. Procedure and preparation: The following procedure is recommended to the applicant seeking a pardon.~~
~~1. A written request must be made to the Board.~~
~~2. Once the written request is received by the Board, they will send a packet of information detailing the requirements for pardon consideration. Included in this packet is a pardon application form which must be completed and submitted along with the additional information required. The application should include all of the following data:~~
~~a. A certified copy of the commitment document from the county in which the applicant was convicted.~~
~~b. Verification of written notice sent to the presiding Judge of the Superior Court and the County Attorney notifying them of his intention to file a pardon application.~~
~~c. Notice of application for a pardon is to be published for thirty (30) days from the first publication in a newspaper in the county where the conviction was received.~~
~~d. A notarized letter from the applicant attesting to any arrest or conviction since his conviction, together with all the facts concerning this conviction.~~
~~e. Three letters from upstanding citizens, relatives not included, attesting to his good conduct since his release.~~
~~f. A recent set of fingerprints obtained at a law enforcement agency in the county where the applicant resides. These results should be forwarded to the Board from the F.B.I.~~
~~E. Hearing: The Board reviews all the information received regarding the individual applicant. He is given written notice of a hearing date. Hearing dates are established by the Chairman of the Board. An applicant may be heard in absentia if he first requests this in writing.~~
~~1. The applicant is interviewed by the Board, at which time he presents his reasons for desiring a pardon and any new information which may aid the Board in reaching a decision.~~
~~2. The individual is allowed to speak first and other witnesses may speak thereafter.~~
~~3. Representation by legal counsel is permitted.~~
~~4. After due consideration, the Board reaches a decision and notifies the applicant within ten (10) days of that decision.~~
~~F. Favorable disposition: Recommendations for a pardon are forwarded to the Governor for his consideration and decision. Data compiled may also be included in this recommendation.~~
~~G. Unfavorable disposition: If the application is not recommended to the Governor or denied by the Governor, the~~

~~applicant may re-apply three years from the date of such action.~~

~~H. Rights restored if any by the Governor: See A.R.S. § 31-443 for any restrictions.~~

R5-4-602. ~~Commutation of sentence~~ Repealed

~~A. This action changes the penalty imposed by a Court on a convicted felon to one that is less severe, but does not restore his civil rights.~~

~~B. Preparation of application. All applications made to the Governor for a commutation of sentence are transmitted to the Chairman of the Board of Pardons and Paroles for review.~~

~~C. Eligibility~~

~~1. Only those inmates certified eligible by the Department of Corrections may apply.~~

~~2. Individuals must complete and sign the Application for Commutation form adopted by the Board.~~

~~3. Only those applicants who have served two (2) years from their sentence begin date and are not within one (1) year of their parole eligibility or their mandatory release date will be considered.~~

~~4. When there is an imminent danger of the death of the person convicted or imprisoned, the Board will immediately grant a personal interview.~~

~~D. Two-step process~~

~~1. First phase: The Board reviews the applications, the applicant's file, letters and all relevant information on a special hearing day set by the Chairman. Family and friends and other witnesses may submit written information concerning the inmate. Legal counsel is permitted.~~

~~a. If a majority of the Board members present believes there is no basis for further consideration on the application, the inmate is notified of the denial.~~

~~b. If sufficient reasons exist to warrant further investigation, the inmate is scheduled to appear for a personal interview.~~

~~2. Second phase: A comprehensive investigation and report are prepared prior to the scheduled hearing.~~

~~a. Witnesses may submit written information and may also appear.~~

~~b. An attorney may be present at this personal interview.~~

~~c. At the conclusion of this hearing, a final decision is made to either recommend this action to the Governor or deny the application.~~

~~E. Actions after second hearing~~

~~1. If the Board's decision is to recommend a Commutation of Sentence to the Governor, a letter of recommendation, including reasons from the members of the Board who voted. In the affirmative, is prepared. Letters of dissent may also be prepared and forwarded.~~

~~2. Letters of recommendation and dissent, along with any or all of the data collected for this second phase, are transmitted to the Governor by the Chairman.~~

~~3. If the Board's decision is to deny the applicant a commutation, the inmate is notified of this decision within ten (10) days.~~

~~4. Subsequent applications are not considered until a period of twenty-four (24) months has elapsed from the previous denial.~~

R5-5-603. ~~Reprieve~~ Repealed

~~A. A reprieve is an executive clemency action granted by the Governor after recommendation by the Board of Pardons and Paroles which temporarily postpones the execution of a judgment for a specific time. The most common use of this action in the State of Arizona applies to the death sentence. The Board has the responsibility and authority to review all cases where an individual is given the death sentence and to determine whether or not there are grounds to grant a reprieve and recommend such action to the Governor.~~

~~B. Pre-hearing procedures~~

~~1. A copy of the Warrant for Execution is sent to the Board when it is served on the individual.~~

~~2. A hearing date is set and the inmate and his attorney are notified in writing; in addition, other appropriate agencies and officials are given notice of this hearing.~~

~~3. A comprehensive report on the inmate, including psychological and psychiatric evaluations, is prepared.~~

~~4. Trial transcripts of the case may be requested by the Board.~~

~~C. Hearing: Interviewing procedures are as usual except the Chairman interviews the inmate and allows the attorney to make his presentation before other Board members ask questions of the inmate and/or his attorney.~~

~~1. Immediate family and a member of the clergy may be present if requested by the inmate and approved by the Board.~~

~~2. Other witnesses may testify one at a time.~~

~~3. A member of the support staff of the Board is responsible for taking minutes, taping the hearing and other duties deemed necessary.~~

~~D. Post hearing procedures~~

~~1. If the decision is to recommend a reprieve, the recommendation, supporting reasons, and any pertinent information are forwarded to the Governor.~~

~~a. The inmate and his attorney are notified of this decision.~~

~~b. The Director of the Department of Corrections and any other appropriate agencies are notified.~~

~~c. The Chairman serves as the spokesman for the Board in relating to the Governor's office, the public and the media.~~

~~d. Any request to re-open the hearing requires a majority vote of the Board.~~

~~2. If the decision is to deny, notification without reasons is sent to the Governor, the inmate, his attorney, the Department of Corrections and other appropriate agencies.~~

~~ARTICLE 7. OTHER BOARD ACTIONS~~

R5-4-705. ~~In absentia hearings~~ Repealed

~~The Board may hold these hearings for an inmate who is not physically present.~~

~~ARTICLE 8. WORK FURLOUGH~~

R5-4-807. ~~Work furlough revocation~~ Repealed

~~A. A preliminary hearing shall be held to determine if there is probable cause that the work furloughee has violated condition(s) of his work furlough.~~

~~1. The inmate on work furlough shall be notified in writing of this hearing date.~~

~~2. A designee of the Board shall conduct the preliminary hearing.~~

~~3. The work furloughee shall be given an opportunity to speak on his behalf and may be represented by legal counsel at his expense.~~

~~4. Friends, family and other witnesses shall be allowed to speak concerning the work furloughee, subject to limitation to avoid repetition.~~

~~5. The work furloughee may request the presence of persons who have given adverse information on which a work furlough violation is to be based and may cross-examine those persons.~~

~~6. The hearing officer shall consider all the facts presented and decide if there is probable cause to believe a violation has occurred, or that the best interests of the state would be served by revoking the work furlough.~~

~~7. A work furloughee shall be continued on work furlough status when it is determined that no probable cause exists or when the best interests of the state would be served by allowing the inmate to remain on work furlough status.~~

~~8. When it is determined that there is probable cause to believe a violation has occurred, the work furloughee shall be remanded to the custody of the Department of Corrections to await a work furlough revocation hearing by the Board of Pardons and Paroles, after the disposal of any and all charges pending against him.~~

~~9. A work furloughee may waive his preliminary hearing in which case a finding of probable cause will be entered.~~

~~B. Upon a finding of probable cause to believe a violation has occurred, a revocation hearing shall be held to determine if a violation(s) of work furlough has occurred or if it is in the best interests of the state to revoke the work furlough.~~

~~1. The inmate on work furlough shall be notified in writing of this hearing date.~~

~~2. The work furloughee shall be granted a hearing before the Board and shall be interviewed as to the alleged violation.~~

~~3. Input from family and other witnesses shall be considered, subject to limitation to avoid repetition.~~

~~4. Legal counsel is permitted at the work furloughee's expense.~~

~~5. The Board shall make its decision and notify the inmate and the Director of the Department of Corrections, in writing, of its decision, within ten (10) days.~~

~~6. The work furloughee found in violation may be returned to the Department of Corrections.~~

~~7. There is no right to appeal the final decision of the Board.~~[

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

PREAMBLE

1. Sections Affected / Rulemaking Action

R9-22-342	Amend
R9-22-701	Amend
R9-22-702	Amend
R9-22-703	Amend
R9-22-705	Amend
R9-22-706	Amend
R9-22-707	Amend
R9-22-709	Amend
R9-22-710	Amend
R9-22-711	Amend
R9-22-715	Amend
R9-22-717	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2903.01(H)

Implementing statutes: A.R.S. §§ 36-2903(N); 36-2903.01(J), (K), (L), (N), and (O); 36-2904(A), (B), (C), (D), (G), (H), (I), (J), (K), and (M); 36-2908; 36-2909; and 41-1005(A)(9).

3. **The effective date of the rules:**

September 22, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 868, March 28, 1997.

Notice of Proposed Rulemaking: 3 A.A.R. 932, April 4, 1997.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Cheri Tomlinson

Address: AHCCCS
801 East Jefferson, MD 4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

These Articles were opened in response to the 5-year review report completed in August 1996. Modifications were needed to the rule language because of contract provisions which are effective October 1, 1997. These rules compliment the content of the requirements of the RFP.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

The economic impact of the changes on persons directly affected (Arizona Health Care Cost Containment System (AHCCCS), Arizona Department of Economic Security (DES), providers, contractors, and taxpayers) are nominal. The revisions will potentially benefit all persons directly affected by enhancing the clarity and conciseness of the rule. The changes are made primarily in response to the 5-year review report, and to update payment and coverage responsibilities for the acute care contract period starting October 1, 1997, and do not change the payment rates or payment methodology for services provided to AHCCCS eligible persons and members.

The economic impact of the change regarding prior period coverage on contractors is limited. AHCCCS will make capitation payments to contractors to cover costs associated with processing and paying the prior period claims. The current expenditures for these services are not significant, as they constitute approximately 5% of total costs for acute care services provided by AHCCCS. This change is reflective of Arizona's competitive government initiative to privatize functions currently performed by State government, and in the long term offers potential savings as fewer AHCCCS FTEs are needed to process and pay claims.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Article 3: The changes between the proposed rules and final rules are minimal. Grammatical, verb tense, and punctuation changes were made throughout the Article to make the rule more clear, concise, and understandable.

Article 7: Changes were made to the final rules primarily because of public comment received requesting the rule language be changed to provide further clarification of changes made to this Article. In addition, grammatical, verb tense, and punctuation changes were made throughout to make the rule more clear, concise, and understandable.

The differences between the proposed rule and final rule include:

- Revised the language in R9-22-703(B)(2)(a) to reflect the change in prior period coverage responsibilities for contractors concerning time-frames for reinsurance claims submission;
- Revised the language in R9-22-703(B)(2)(b) to add "an inpatient hospital claim" and to delete the words "keyed to";
- Revised the language in R9-22-703(D) to reflect the Administration's current practice for recoupment of over payments;
- Revised the language in R9-22-705(A) to reflect the change in prior period coverage responsibilities for contractors concerning time-frames for claims submission;
- Revised the language in R9-22-705(A)(3) to clarify that hospital claims that are pended for additional supporting documentation that is necessary to reach clean claim status, as defined in A.R.S. § 36-2904, shall receive a new date of receipt upon receipt of the additional supporting documentation;
- Revised the language in R9-22-705(B)(1) to delete the statutory and rule reference;
- Revised the language in R9-22-705(B)(2) to clarify the language regarding contractor responsibilities for emergency services, specifically emergency behavioral health services;
- Revised the language in R9-22-707 to clarify the language regarding a Plans responsibility for MN/MI newborns;
- Revised the language in R9-22-711 to remove the co-payment for nonemergency use of emergency transportation services; and
- Revised the language in R9-22-717(F) to clarify the time-frame for filing grievances for denials and recoupments.

10. **A summary of the principal comments and the agency response to them:**

AHCCCS received 9 comments regarding this rule package. These comments all resulted in revisions to the rule language.

Eight of the comments received were requesting rule language be revised to provide further clarification of the following:

- Submission of when claims can be submitted for prior period coverage for contractors and providers;
- Submission of when reinsurance claims can be submitted as it applies to prior period coverage for contractors;
- Recoupments of overpayments;
- Contractors date of receipt of inpatient and outpatient hospital claims;
- Contractors responsibility for emergency care services;
- Contractor payment for MN/MI newborns; and
- The time-frames for filing grievances.

The other comment received concerned the change that involves the program contractors responsibility for medically necessary services provided back to the date of eligibility. The commentor felt that this change was inconsistent with their current process. The Agency responded to the commentor that the practice regarding "prior period coverage" will change effective October 1, 1997, for all health plans and program contractors.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

12. **Incorporations by reference and their location in the rules:**

42 CFR § 447.205, December 19, 1983, incorporated in R9-22-710.

42 CFR §§ 447.331 through 447.332, July 31, 1987, incorporated in R9-22-710.

13. **Was this rule previously adopted as an emergency rule?**

Not applicable.

14. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 3. ELIGIBILITY AND ENROLLMENT

Section

R9-22-342. Newborn Enrollment

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-701. ~~Scope of the Administration's liability; payments to contractors~~ Scope of the Administration's Liability; Payments to Contractors

R9-22-702. ~~Prohibition against charges to members or eligible persons~~ Prohibitions Against Charges to Members or Eligible Persons

R9-22-703. Claims

R9-22-705. Payments by Contractors

R9-22-706. Payments by the Administration for Services Provided to Eligible Persons

R9-22-707. Payments for Newborns

R9-22-709. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent ~~care~~ Care

R9-22-710. Capped ~~Fee-for-service Payment~~ Fee-for-service Payments for Non-hospital Services

R9-22-711. Copayments

R9-22-715. Hospital Rate Negotiations

R9-22-717. Hospital Claims Review

ARTICLE 3. ELIGIBILITY AND ENROLLMENT

R9-22-342. Newborn Enrollment

A. A newborn baby is eligible for AHCCCS as specified in R9-22-339 only when the mother is eligible for AHCCCS-covered services on the date of the newborn baby's birth.

B. ~~Contractors shall notify the Administration of all newborn babies born to mothers who are eligible and enrolled with them on the date of the newborn's birth.~~ The Contractor is responsible for notifying the Administration of a child's birth to an enrolled member. For capitation purposes, as specified in R9-22-707 and as provided in contract, the effective date of the newborn's enrollment is the date the Administration receives notification.

1. ~~If the contractor notifies the Administration within three days after the date of birth, enrollment and capitation shall begin on the baby's date of birth.~~
2. ~~If the contractor notifies the Administration after the third day but before the 31st day following birth, enrollment and capitation shall begin on the date of notification.~~
3. ~~If the contractor notifies the Administration more than 30 days following birth, enrollment and capitation shall begin on the third day after the date of notification.~~

C. ~~If the mother is enrolled with a different contractor on the newborn's date of birth than on the date of notification: 1.~~ The Administration shall enroll a newborn baby ~~shall be enrolled~~ with the ~~mother's~~ contractor with whom the mother is enrolled on the date ~~of notification effective the third day~~

~~after notification.~~ the Administration receives notification of the newborn baby's birth.

~~2. The newborn's enrollment with the mother's contractor on the date of birth shall not exceed the duration of the mother's enrollment with that contractor.~~

~~3. For mothers enrolled with a different contractor on the newborn's date of birth than on date of notification, any period between termination of the newborn initial enrollment and enrollment with the mother's contractor shall be covered on a fee-for-service basis.~~

~~D. If the mother is not enrolled with a contractor at the time of the notification:~~

~~1. Categorically eligible mothers shall be allowed a period of time, not to exceed 12 working days, to choose a contractor for the newborn.~~

~~2. Newborns of indigent and medically needy mothers shall be assigned to a contractor. Enrollment and capitation shall begin on the third day after the date of notification.~~

~~E. Hospitals shall notify the Administration of all newborns of mothers who are eligible for AHCCCS and not enrolled with a contractor on the newborn's date of birth.~~

~~1. If the mother is enrolled with a contractor by the date of notification, the newborn shall be enrolled with the mother's contractor and capitation shall begin three days after notification.~~

~~2. The period from date of birth to date of enrollment with a contractor shall be covered on a fee-for-service basis.~~

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-701. ~~Scope of the Administration's liability; payments to contractors~~ Scope of the Administration's Liability; Payments to Contractors

A. The Administration shall bear no liability for ~~the provision of~~ providing covered services to or ~~the completion of~~ completing a plan of treatment ~~to~~ for any member or eligible person beyond the date of termination of ~~such~~ the individual's eligibility or ~~and~~ enrollment.

B. ~~All~~ The Administration shall make all payments to a ~~contractors shall be made pursuant to~~ contractor in accordance with the terms and conditions of the ~~contracts~~ contract executed between the contractor and the Administration and in accordance with these rules.

C. The Administration shall bear no liability for subcontracts ~~which the~~ that a contractor ~~may execute~~ executes with other parties for the provision of ~~either~~ administrative or management services, medical services, or covered health care services, or for any other purpose. ~~The~~ A contractor shall indemnify and hold the Administration harmless from any and all liability arising from ~~these~~ the contractor's ~~subcontracts and~~ subcontracts, shall bear all costs of defense of any litigation over ~~such liability~~ the liability, and shall satisfy in full any judgment entered against the Administration in ~~such connection.~~ litigation involving the contractor's subcontracts.

~~D. Prepayments shall be made monthly to those capitated contractors who have either posted required performance bonds or have otherwise provided security sufficient to the Director.~~ The Administration shall make capitation payments monthly to a contractor who meets the requirements in A.R.S. § 36-2903(N).

~~E. The Director shall consider the following criteria when extending the deferred liability period specified in Article 3 of these rules.~~

~~1. Hospitalization of the eligible person.~~

~~2. The effective date of enrollment.~~

~~3. The type and location of medical care being provided.~~

~~4. The expected date of delivery for high risk pregnancies.~~

~~F. Where applicable, providers and nonproviders shall submit claims to the Administration at rates not to exceed negotiated rates.~~

R9-22-702. ~~Prohibition against charges to members or eligible persons~~ Prohibitions Against Charges to Members or Eligible Persons

A. ~~No~~ A contractor, subcontractor, or other provider of care or services shall not charge, submit a claim, demand, or otherwise collect payment from a member or eligible person, or a person acting on behalf of a member or eligible person, for any covered service except to collect an authorized ~~co-payments~~ copayment or payment for additional services. ~~Prepaid~~ A prepaid capitated ~~contractors~~ contractor shall have the right to recover from a member that portion of payment made by a ~~third~~ 3rd party to the member when ~~such~~ the payment duplicates AHCCCS paid benefits and has not been assigned to the prepaid contractor. ~~Claims made~~ A prepaid capitated contractor who makes a claim under this provision ~~by prepaid capitated contractors~~ shall not ~~exceed~~ charge more than the actual, reasonable cost ~~for the provision~~ of providing the covered services.

B. ~~Providers~~ A provider shall not bill or make any attempt to collect payment, directly or through a collection agency, from ~~a person~~ an individual claiming to be AHCCCS eligible without 1st receiving verification from the Administration that the ~~person~~ individual was ineligible for AHCCCS on the date of ~~services~~ service or that the services provided were not covered by AHCCCS.

C. A provider, including a noncontracting provider, may bill an eligible person for medical expenses incurred during a period of time when the eligible person willfully ~~withholds~~ withheld material information from the provider or ~~provides~~ gave false information to the provider pertaining to ~~his~~ the eligible person's AHCCCS eligibility or enrollment status that ~~results in denial of~~ caused payment ~~due to the failure to disclose such information or the provision of false information.~~ to be denied.

R9-22-703. Claims

A. Claims submission to contractors. ~~All~~ A provider shall submit to a capitated contractor all claims for services rendered to ~~members~~ a member enrolled with ~~a prepaid contractor~~ the capitated contractor, including services rendered during a prior period for which the capitated contractor is responsible. ~~shall be submitted to such contractor.~~

B. Claims submission to the AHCCCS Administration.

1. ~~Claims~~ A provider, noncontracting provider, or nonprovider shall ensure that a claim for covered services provided to an AHCCCS eligible ~~persons and enrolled members must be~~ person is initially received by the AHCCCS Claims Administration not later than ~~nine~~ 9 months from the date of service or 9 months from the date of eligibility posting, whichever is later. ~~Claims~~ The Administration shall deny a claim not received within the ~~initial nine~~ 9-month period from the date of ~~service shall be denied~~ service or 9 months from the date of eligibility posting, whichever is later. If ~~the~~ a claim meets the ~~nine~~ 9-month limitation, ~~contractors, providers~~, the provider, noncontracting ~~providers and nonproviders~~ provider, or nonprovider shall file a clean claim which is received by the AHCCCS Claims Administration not later than 12 months from the date of ~~service.~~

service or 12 months from the date of eligibility posting, whichever is later.

2. Exceptions to the 9-month and 12-month rules are:
   a. ~~Reinsurance claims shall not be considered~~ The Administration shall not consider a reinsurance claim for payment unless the ~~claims are~~ claim is received by the AHCCCS Claims Administration not later than ~~nine~~ 9 months from the close of the contract year in which the claim ~~was~~ is incurred or 9 months after the date of eligibility posting, whichever is later. If ~~the~~ a claim meets the ~~nine~~ 9-month limitation, ~~contractors~~ the contractor shall file a clean claim which is received by the AHCCCS Claims Administration not later than 12 months from the close of the contract year in which the claim ~~was incurred.~~ is incurred or 12 months after the date of eligibility posting, whichever is later.
   b. The ~~nine~~ 9 month deadline for ~~hospitals will be keyed to~~ an inpatient hospital claim begins on the date of discharge ~~on~~ for each ~~individual~~ claim.

C. Claims processing.
   1. ~~Claims which contain~~ If a claim contains erroneous or conflicting information, ~~exceed~~ exceeds parameters, ~~fail~~ fails to process correctly, ~~do~~ does not match the AHCCCS files, or ~~require~~ requires manual review ~~in order~~ to be ~~resolve~~ resolved, ~~the claims~~ the Administration ~~shall be reported~~ shall report the claim to the provider with ~~a claim correction letter (CCL).~~ a remittance advice.
   2. ~~Hospital claims shall be processed pursuant to R9-22-706.~~ The Administration shall process a hospital claim in accordance with R9-22-712.

D. Overpayments for AHCCCS services. When an AHCCCS overpayment is made to a provider, noncontracting provider, nonprovider, or contractor, the provider, noncontracting provider, nonprovider, or contractor ~~is~~ shall notify AHCCCS that an overpayment was made. The Administration shall recoup an overpayment from a future claim cycle, or, at the discretion of the Director, require the provider, noncontracting provider, nonprovider, or contractor ~~responsible~~ to return the incorrect ~~payment.~~ payment to AHCCCS.

R9-22-705. Payments by Contractors

A. ~~Contractors~~ A contractor shall pay for all admissions and covered services rendered to ~~their~~ its members ~~where such~~ if the covered services or admissions have been arranged by ~~their~~ the contractor's agents or employees, subcontracting providers, or other individuals acting on the contractor's behalf and ~~for which~~ if necessary authorization has been obtained. A contractor shall not require prior authorization for medically necessary covered services provided during any prior period for which the contractor is responsible. ~~Contractors are~~ A contractor is not required to pay ~~claims~~ a claim for covered services that ~~are~~ is submitted more than ~~six~~ 6 months after the date of the service or more than 6 months after the date of eligibility posting, whichever is later, ~~for which payment is claimed~~ or that ~~are~~ is submitted as a clean ~~claims~~ claim more than 12 months after the date of the service or more than 12 months after the date of eligibility posting, whichever is later. ~~for which payment is claimed.~~
   1. A contractor shall reimburse subcontracting and noncontracting providers for the provision of medically necessary health care services to the contractor's members, within the time period specified by contract between the contractor and the subcontracting entity or within 60 days of receipt of a valid clean claim if a time period is not specified.
   2. A contractor shall provide written notice to a provider whose claim is denied or reduced by the contractor within 60 days of receipt of the claim. This notice shall include a statement describing the provider's right to:
      a. Grieve the contractor's rejection or reduction of the claim, and
      b. Submit a grievance according to Article 8 of these rules.
   3. A contractor's date of receipt of an inpatient or outpatient hospital claim shall be the date the claim is received by the contractor as indicated by the date stamp on the claim, the claim reference number, or the date-specific number system assigned by the contractor. A hospital claim shall be considered paid on the date indicated on the disbursement check. A denied hospital claim shall be considered adjudicated on the date of its denial. Claims that are pending for additional supporting documentation will receive new dates of receipt upon receipt of the additional documentation; however, claims that are pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01(J) or A.R.S. § 36-2904(K), as applicable, will not receive new dates of receipt. A contractor and a hospital may, through a contract approved in accordance with R9-22-715(A), adopt a method for identifying, tracking, and adjudicating claims that is different from the method described in this subsection.

B. Payment for medically necessary outpatient services.
   ~~1. Contractors shall reimburse subcontracting and noncontracting providers for the provision of medically necessary health care services to their members, within the time period specified by contract between a contractor and a subcontracting entity or within 60 days of receipt of valid accrued claims if a time period is not specified.~~
   ~~2.~~1. ~~Contractors~~ A contractor shall reimburse subcontracting and noncontracting providers for the provision of outpatient hospital services rendered on or after March 1, 1993, at either a rate specified by subcontract or, in absence of a subcontract, the AHCCCS hospital-specific outpatient cost-to-charge ratio multiplied by covered charges. ~~(billed charges that represent covered services and are medically necessary) set forth in A.R.S. § 36-2903.01(J)(4) and R9-22-712.~~ Subcontract rates, terms, and conditions are subject to review, and approval or disapproval ~~pursuant to~~ under A.R.S. § 36-2904(K)(1)(b) and R9-22-715.
   2. A contractor shall pay for all emergency care services rendered to its members by noncontracting providers or nonproviders when the services:
      a. Conform to the definitions of emergency medical and acute mental health services in Articles 1 and 12; and
      b. Conform to the notification requirements in Article 2.

C. Payment for inpatient hospital services. ~~Contractors~~ A contractor shall reimburse out-of-state hospitals for the provision of hospital services at negotiated discounted rates, the Arizona average cost-to-charge ratio multiplied by ~~allowed~~ covered charges or, if reasonably and promptly available, the Medicaid rate that is in effect at the time services are provided in the state in which the hospital is located, whichever is lowest. ~~Contractors~~ A contractor shall reimburse in-state subcontractors and noncontracting providers for the provi-

sion of inpatient hospital services rendered with an admission date on or after March 1, 1993, at either a rate specified by subcontract or, in absence of a subcontract, the prospective tiered-per-diem amount ~~set forth~~ in A.R.S. § 36-2903.01 and R9-22-712. Subcontract rates, terms, and conditions are subject to ~~review,~~ review and approval or disapproval ~~pursuant to~~ under A.R.S. § 36-2904(K)(1)(b) and R9-22-715. This subsection does not apply to a contractor participating in the pilot program described in R9-22-718.

~~1. Contractors shall pay for all emergency care services rendered their members by noncontracting providers or nonproviders when such services:~~

~~a. Conform to the definitions of emergency medical and acute mental health services defined in Article 1, and~~

~~b. Conform to the notification requirements set forth in Article 2.~~

~~2. Contractors shall provide written notice to claimants whose claims are denied or reduced by the contractor within 30 days of receipt of such claims. This notice shall include a statement describing the provider's right to:~~

~~a. Grieve the contractor's rejection or reduction of the claim.~~

~~b. Submit the grievance to the Administration pursuant to Article 8 of these rules.~~

D. Payment for observation days. ~~Contractors~~ A contractor may reimburse subcontracting and noncontracting providers for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, ~~at~~ the AHCCCS hospital-specific outpatient cost-to-charge ratio multiplied by ~~allowed charges (billed charges that represent covered services and are medically necessary).~~ covered charges.

E. Review of hospital claims.

1. If a contractor and a hospital do not agree on reimbursement levels, terms, and conditions, the reimbursement levels established ~~pursuant to~~ under A.R.S. § 36-2903.01 and R9-22-712 or R9-22-718 shall apply. In ~~this case, hospitals~~ these cases, a hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. ~~The~~ A contractor shall consider medical condition of the member, length of stay, and other factors when issuing its prior authorization. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of their contract regarding utilization control activities that may include prior authorization of nonemergency admissions. Failure to obtain prior authorization when it is required shall be cause ~~of~~ for nonpayment or denial of the claim. ~~Furthermore, hospitals~~ A hospital shall cooperate with a contractor's reasonable activities necessary to perform concurrent review and make the ~~hospitals'~~ hospital's medical records, specific to a member enrolled with the contractor, available for review.
2. Regardless of prior authorization or concurrent review activities, all hospital claims, ~~to include~~ including outlier claims, are subject to prepayment medical review and post-payment review by the contractor. Post-payment reviews shall be consistent with A.R.S. § 36-2903.01(O), and erroneously paid claims are subject to recoupment. If prior authorization was given for a specific level of care, but medical review of the claim indicates that a different level of care was appropriate, the contractor may adjust the claim to reflect the ~~most~~ more appropriate level of ~~care, such~~ care. An adjustment in ~~to~~ level of care shall be effective on the date when the different level of care was medically appropriate.
3. A contractor and a hospital may enter into a ~~contract~~ subcontract that includes hospital claims review criteria and procedures different from those in this subsection ~~which~~ if the subcontract binds both parties and ~~provided such contract~~ meets the requirements of R9-22-715.

F. Timeliness of hospital claim payment. ~~1.~~ Payment by ~~the~~ a contractor for inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, shall be subject to Laws 1993, 2nd Special Session Ch. 6, § ~~29;~~ 29, as amended by Laws 1995, 1st Special Session Ch. 5 § 8; ~~Laws 1992, Chapter 302, § 14, as amended by~~ Laws 1993, 2nd Special Session Chapter 6, § 27, as amended by Laws 1995, 1st Special Session Ch.5 § 6; and A.R.S. § 36-2903.01(J)(6).

~~2. The contractor's date of receipt of inpatient or outpatient hospital claims is the date the claim was received by the contractor (date of receipt) as indicated by the date stamp on the claim, the claim reference number or the date specific number system assigned by the contractor. Hospital claims will be considered paid on the date indicated on disbursement checks. Denied claims will be considered adjudicated on the date of their denial. Claims that are denied and are resubmitted will receive new dates of receipt. Claims that are pending for additional supporting documentation from hospitals will receive new dates of receipt upon receipt of the additional supporting documentation, except as provided under R9-22-717. Timeframes for submittal of claims and the definition of clean claim, for purposes of this subsection, shall be consistent with A.R.S. § 36-2904. A contractor and a hospital may, through a contract approved in accordance with R9-22-715(A) adopt a method for identifying, tracking and adjudication of claims different from this paragraph.~~

R9-22-706. Payments by the Administration for Services Provided to Eligible Persons

A. Payment for emergency and medically necessary non-hospital outpatient services. The Administration shall make payments as defined in R9-22-710 for emergency and medically necessary non-hospital services provided to eligible persons.

1. ~~Emergency~~ For dates of service on or before September 30, 1997, emergency services provided to the indigent, the medically needy, and eligible low-income children from the date of notification pursuant to R9-22-313 to the date of enrollment with a prepaid capitated contractor shall be paid at the capped fee-for-service rate or billed charges, whichever is lower. On the date of notification to the AHCCCS Administration, the county shall notify the AHCCCS Administration of the amount of medical expenses necessary to satisfy the spend down requirement of R9-22-321 and incurred by the household, if any, during the period of the Administration's retroactive liability.
2. ~~Medically~~ For dates of service on or before September 30, 1997, medically necessary services provided to categorically eligible persons and eligible assistance children from the effective date of eligibility to the date of enrollment with a prepaid capitated contractor shall be paid at the capped fee-for-service rate or billed charges, whichever is ~~lower~~ less.

3. Payment will be made at the capped fee-for-service rate or billed charges, whichever is lower, for AHCCCS-covered services provided to categorically eligible individuals for a three-month retroactive period as specified in Article 3 of these rules
4. Eligible persons residing in areas that are not served by AHCCCS contracting providers shall be eligible for AHCCCS covered services. Payment for medically necessary services provided to such individuals shall be made at the capped fee-for-service rate or billed charges, which is lower.
5. Payment for services provided to eligible persons whose enrollment has been deferred as specified in Article 3 of these rules will be made at the capped fee-for-service rate or billed charges, whichever is lower.
6. Medically necessary services provided to eligible persons by out-of-state providers shall be paid at the capped fee-for-service rate pursuant to R9-22-710 or the Medicaid rate that is in effect at the time services are provided in the state in which the provider is located, whichever is lower.

B. Payment for emergency services provided prior to May 5, 1984.
1. Noncontracting providers furnishing emergency hospitalization services and continuing medically necessary inpatient care to eligible persons will be reimbursed at 95% of billed charges as filed with the Department of Health Services until the person is discharged, transferred, or enrolled with a prepaid capitated provider.
2. Nonproviders. Nonproviders furnishing emergency and continuing medically necessary inpatient care to an eligible person will be reimbursed at 80% of billed charges as filed with the Department of Health Services until the person is discharged, transferred or enrolled with a prepaid capitated provider but not longer than three days from the time the person was admitted for care. Payment for care required beyond three days will be made at the capped fee-for-service rate if lower than 80% of billed charges. As a condition for payment, nonprovider hospitals must designate a primary care physician to act as coordinator of services provided to eligible persons until they are discharged, transferred or enrolled with an AHCCCS contractor.
3. Retroactive payment for emergency services provided to categorically eligible individuals will be made at the capped fee-for-service rates.
4. Retroactive payment for emergency services provided to indigent or medically needy individuals will be made at the rates identified in (B)(1) and (2) of this Section for a maximum of five days prior to the date of eligibility determination, provided that notification requirements specified in Article 3 of these rules are met. Emergency services will be covered from the time a person registered for services within the five-day retroactive coverage period to the time the person is discharged or enrolled with a prepaid contractor.

C. For covered hospital services provided to AHCCCS eligible persons prior to May 5, 1984, the following shall apply: The maximum allowable rate is 105% of the Medicare Periodic Interim Payment per diem rate as of October 1, 1983 (the Medicare Periodic Interim Payment Schedule is incorporated by reference and on file in the Office of the Secretary of State), for inpatient care and 80% of billed charges for clinics and nonemergency services provided in emergency rooms. If the public and/or academic nature of a hospital enables the hospital to adequately demonstrate proof that its operations are publicly subsidized and that its ratio of costs to billed charges is greater than or equal to one then the maximum allowable inpatient rate shall be billed charges and the clinic and emergency rooms rate shall be 95% of billed charges.

D. For covered hospital services provided to AHCCCS eligible persons on or after May 5, 1984, until October 1, 1985.
1. Hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by out-of-state hospitals will be paid at the Medicaid rate that is in effect at the time the services are provided in the state in which the hospital is located.
2. Payment for hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by in-state, nonfederal hospitals will be based on the schedule of rates and charges that hospitals had in effect on April 1, 1984, as filed with the Department of Health Services.
   a. A hospital which had filed for a rate increase with the Department of Health Services on or before May 1, 1984, but which had not implemented such rate increase by May 1, 1984, shall be allowed a one-time only increase in its adjusted billed charge as follows:
      i. The allowable increase in the adjusted billed charge for any hospital which implemented its last previous rate increase before April 30, 1983, shall be 10% or the increase in rates filed with the Department of Health Services, whichever is less.
      ii. The allowable increase in the adjusted billed charge for any hospital which implemented its last previous rate increase on or after April 30, 1983, but before October 1, 1983, shall be 5% or the increase in rates recommended by the Department of Health Services, whichever is less.
   b. No other increase in adjusted billed charges shall be allowed.
3. Claims for services rendered on or after the date of implementation of any rate increase filed with the Department of Health Services after May 1, 1984, shall be paid at the applicable adjusted billed charges determined in (D)(2) above.
4. For services rendered before October 1, 1984, the Administration shall not pay a hospital's charges on a fee-for-service basis in excess of 85% of the hospital's adjusted billed charges.
5. The date for purposes of determining the timeliness discount of adjusted billed charges that will be paid is the date the claim is determined to be a clean claim by the Administration. For services rendered on or after October 1, 1984, but until October 1, 1985, the Administration shall not pay a hospital's adjusted billed charges in excess of the following:
   a. If the hospital's bill is paid within 30 days of the date the bill was received, 85% of the adjusted billed charges.
   b. If the hospital's bill is paid any time after 30 days through 60 days of the date the bill was received, 95% of the adjusted billed charges.
   c. If the hospital's bill is paid any time after 60 days of the date the bill was received, 100% of the adjusted billed charges.

6. The date of receipt of hospital claims is the date the clean claim is received by the Administration as indicated by the date stamp on the claim and the claim reference number. Hospital claims will be considered paid on the date indicated on disbursement checks. Denied claims will be considered adjudicated on the date of their denial. Claims that are rejected or require additional supporting documentation from providers will receive new date stamps. Only valid clean claims that are submitted in accordance with AHCCCS rules and represent charges for the provision of hospital services to individuals who have been determined AHCCCS eligible will be processed.

E. For covered hospital services provided to AHCCCS eligible persons on or after October 1, 1985, until October 1, 1986.

1. Hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by out of state hospitals will be paid at the Medicaid rate that is in effect at the time the services are provided in the state in which the hospital is located.
2. Payment for hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by in state, nonfederal hospitals will be based on the schedule of rates and charges that hospitals had in effect on April 1, 1984, as filed with the Department of Health Services, or on one of the following if applicable:
   a. The schedule of rates and charges for a hospital which became effective after May 31, 1984, but prior to July 2, 1984, if the hospital's previous rate schedule became effective prior to April 30, 1983.
   b. The schedule of rates and charges for a hospital which became effective after May 31, 1984, but prior to July 2, 1984, limited to 5% over the hospital's previous rate schedule, and if the hospital's previous rate schedule became effective on or after April 30, 1983, but prior to October 1, 1983.
3. The date for purposes of determining the timeliness discount of adjusted billed charges that will be paid is the date the claim is determined to be clean by the Administration. For services rendered on or after October 1, 1985, but until October 1, 1986, the Administration shall not pay a hospital's adjusted billed charges in excess of the following:
   a. If the hospital's bill is paid within 30 days of the date the bill was received, 85% of the adjusted billed charges.
   b. If the hospital's bill is paid any time after 30 days through 60 days of the date the bill was received, 95% of the adjusted billed charges.
   c. If the hospital's bill is paid any time after 60 days of the date the bill was received, 100% of the adjusted billed charges.
4. The date of receipt of hospital claims is the date the claim was received by the Administration as indicated by the date stamp on the claim and the claim reference number. Hospital claims will be considered paid on the date indicated on disbursement checks. Denied claims will be considered adjudicated on the date of their denial. Claims that are rejected or require additional supporting documentation from providers will receive new date stamps. Only valid clean claims that are submitted in accordance with AHCCCS rules and represent charges for the provision of hospital services to individuals who have been determined AHCCCS eligible will be processed.

F. For covered hospital services provided to AHCCCS eligible persons on or after October 1, 1986, until January 1, 1991.

1. Hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by out of state hospitals shall be paid at negotiated discounted rates, 80% of billed charges or the Medicaid rate that is in effect at the time services are provided in the state in which the hospital is located, whichever is lowest.
2. Payment of hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by in state, nonfederal hospitals will be based on the reimbursement level in effect on October 1, 1985, increased by 4%, according to the requirements set forth in A.R.S. § 36-2903.01(J).
3. The date for purposes of determining the timeliness discount of adjusted billed charges that will be paid is the date the claim is determined to be clean by the Administration. For services rendered on or after October 1, 1986, the Administration shall not pay a hospital's adjusted billed charges in excess of the following:
   a. If the hospital's bill is paid within 30 days of the date the bill was received, 85% of the adjusted billed charges.
   b. If the hospital's bill is paid any time after 30 days through 60 days of the date the bill was received, 95% of the adjusted billed charges.
   c. If the hospital's bill is paid any time after 60 days of the date the bill was received, 100% of the adjusted billed charges.
4. The date of receipt of hospital claims is the date the claim was received by the Administration as indicated by the date stamp on the claim and the claim reference number. Hospital claims will be considered paid on the date indicated on disbursement checks. Denied claims will be considered adjudicated on the date of their denial. Claims that are rejected or require additional supporting documentation from hospitals will receive new date stamps. Only valid clean claims that are submitted in accordance with AHCCCS rules and represent charges for the provision of hospital services to individuals who have been determined AHCCCS eligible will be processed.
5. Payments pursuant to paragraphs (2) and (3) shall not exceed the schedule of rates and charges that hospitals had in effect, as filed with the Department of Health Services, as of the date of service.

G. For covered hospital services provided to AHCCCS eligible persons on or after January 1, 1992, until March 1, 1993.

1. Hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by out of state hospitals shall be paid at negotiated discounted rates, 80% of billed charges or the Medicaid rate that is in effect at the time services are provided in the state in which the hospital is located.
2. Payment of hospital inpatient, outpatient and emergency services provided to AHCCCS eligible persons by in state, nonfederal hospitals will be based on the reimbursement level in effect on December 31, 1990, increased by 2 1/2%, and according to the requirements set forth in A.R.S. § 36-2903.01(J).
3. For services rendered on or after January 1, 1991, the Administration shall not pay a hospital's adjusted billed charges in excess of the following:

~~a. If the hospital's bill is paid within 30 days of the date the bill was received, 85% of the adjusted billed charges.~~

~~b. If the hospital's bill is paid any time after 30 days through 60 days of the date the bill was received, 95% of the adjusted billed charges.~~

~~c. If the hospital's bill is paid any time after 60 days of the date the bill was received, 100% of the adjusted billed charges.~~

~~4. The date of receipt of hospital claims shall be the date the claim was received by the Administration as indicated by the date stamp on the claim and the claim reference number. Hospital claims shall be considered paid on the date indicated on disbursement checks. Denied claims shall be considered adjudicated on the date of their denial. Claims that are denied or that are pended through the claims correction process, because they are incorrect or incomplete, shall receive new date stamps when all requirements are met~~

~~5. Payments pursuant to paragraphs (2) and (3) shall not exceed the schedule of rates and charges that hospitals had in effect, as filed with the Department of Health Services, as of the date of service.~~

~~H~~B. Indian Health Service. The ~~maximum allowable rates paid~~ Administration shall pay IHS the all-inclusive inpatient, outpatient, or ambulatory surgery rates published in the Federal Register ~~to IHS~~ for AHCCCS-covered services provided in IHS facilities. ~~shall be the same as the all-inclusive inpatient, outpatient, or ambulatory surgery rates published in the Federal Register.~~ Except as provided in R9-22-708, IHS medical service referrals for eligible Native Americans made to off-reservation contractors, providers, noncontracting providers, or nonproviders shall be prior authorized.

R9-22-707. Payments for Newborns

If ~~the~~ a mother is enrolled on the date of ~~the~~ her newborn baby's birth, ~~the~~ a contractor shall be financially liable under the mother's capitation to provide all AHCCCS-covered services to the newborn baby from the date of birth to the date of the mother's disenrollment or the date of the baby's enrollment, whichever occurs 1st. However, if the mother is eligible for AHCCCS as an indigent or medically needy individual, the contractor shall ~~then~~ have a maximum liability of 60 days under the mother's capitation.

~~B. Deferred liability. Deferred liability for sick newborns shall commence with the date of enrollment and shall be governed by the provisions specified in R9-22-336.~~

R9-22-709. Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care

A. For purposes of program and contractor liability, an emergency medical or acute mental health condition of a member shall be subject to reimbursement only until ~~such time as~~ the ~~patient's~~ member's condition is stabilized and the ~~patient~~ member is transferable, or until the ~~patient~~ member is discharged following stabilization subject to the requirements of A.R.S. § 36-2909(E) and Article 2 of these rules.

B. Subject to subsection (A), ~~in the event that~~ if a member cannot be transferred following stabilization to a facility ~~which~~ that has a subcontract with the contractor of record ~~following stabilization,~~ the contractor of record shall pay for all appropriately documented, prior authorized, ~~in accordance with R9-22-705~~ and medically necessary treatment provided ~~such~~ the member ~~prior to~~ before the date of discharge or transfer in accordance with payment standards in R9-22-705.

C. ~~In the event that~~ If a member refuses transfer from a nonprovider or noncontracting hospital to a hospital affiliated with the member's contractor of record, neither the Administration nor the contractor shall be liable for any costs incurred ~~subsequent to~~ after the date of refusal ~~when~~ if:

1. ~~Subsequent to~~ After consultation with ~~his~~ the member's contractor of record, the member continues to refuse the ~~transfer,~~ transfer; and
2. The member has been provided and signs a written statement, ~~prior to~~ before the date of transfer of liability, informing ~~him~~ the member of the medical and financial consequences of ~~such refusal~~ refusing to transfer. If the member refuses to sign a written statement, ~~then~~ a statement signed by ~~two~~ 2 witnesses indicating that the member was informed may be substituted.

R9-22-710. Capped ~~Fee-for-service Payment~~ Fee-for-service Payments for Non-hospital Services

A. Service codes. ~~A~~ The Administration shall maintain a current copy of the following code manuals ~~shall be maintained on file~~ at the central office of the Administration for reference use during customary business hours:

1. The Physicians' Current Procedural Terminology (CPT) and Health Care Financing Administration Common ~~Procedures~~ Procedure Coding System (HCPCS) ~~shall be utilized to~~. These manuals identify medical services and procedures performed by physicians and other providers.
2. ~~The Code on Dental Procedures and Nomenclature, as published in the Journal of the American Dental Association, shall be utilized to identify dental procedures.~~
3.2. The AHCCCS Transportation, Supply, Equipment, and Appliance codes ~~shall be utilized to~~. These codes identify ~~the~~ applicable ~~service~~ services or supplied ~~item~~ items.
4.3. The International Classification of Diseases.
5.4. ~~American Druggist Blue Book.~~ Nationally recognized pharmacy coding manual.

B. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified ~~below~~ in subsections (B)(1) through (B)(5) unless a different fee is specified by ~~contracts~~ contract between the Administration and the provider, or ~~as~~ is otherwise required by law. ~~Notice~~ The Administration shall provide notice of changes in methods and standards for setting payment rates for services ~~shall be~~ in accordance with 42 CFR 447.205, ~~October 1, 1987~~ effective December 19, 1983, incorporated by reference ~~herein~~ and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

1. Physician services. ~~Payment shall be in accordance with fee~~ Fee schedules for payment for physicians services ~~which~~ are on file at the central office of the Administration for reference use during customary business hours.
2. ~~Hospital services. Hospital services provided to eligible persons shall be paid pursuant to R9-22-712.~~
32. Pharmacy services. ~~Payment for pharmacy services shall be in accordance with fee~~ Fee schedules for payment for pharmacy services ~~which~~ are exempt from rule making procedures ~~pursuant to~~ under A.R.S. § 41-1005, but are subject to 42 CFR §§ 447.331 through 447.332, effective July 31, 1987, which is incorporated by reference ~~herein~~ and on file with the Administration and the Office of Secretary of State. These incorporations by reference contain no further editions or amendments.
43. Dental services. ~~Payment shall be in accordance with fee~~ Fee schedules for payment for dental services ~~which~~

are on file at the central office of the Administration for reference use during customary business hours.

~~5~~4. Transportation services:

a. Ground ambulance services. ~~Payment for ambulance services shall be made in accordance with fee~~ Fee schedules for payment for ambulance services ~~which~~ are on file at the central office of the Administration for reference use during customary business hours. For ambulance providers that have charges established by the Arizona Department of Health Services (ADHS), the fee schedule amount is 80% of the ambulance provider's ADHS-approved fees for covered services. For ambulance providers whose fees are not established by ADHS, ~~payment shall be made at~~ the fee schedule amount is 80% of the ambulance provider's billed charges or the capped fee-for-service amount for covered services, whichever is less.

b. Air ~~Ambulance~~ ambulance services. ~~Payment for air ambulance services shall be made in accordance with fee~~ Fee schedules for payment for air ambulance services ~~which~~ are on file at the central office of the Administration for reference use during customary business hours.

c. Nonambulance services. ~~Payment for nonambulance services shall be made in accordance with fee~~ Fee schedules for payment for nonambulance services ~~which~~ are on file at the central office of the Administration for reference use during customary business hours.

~~6~~5. Medical equipment. ~~Payment for medical equipment shall be in accordance with fee~~ Fee schedules for payment for medical equipment ~~which~~ are on file at the central office of the Administration for reference use during customary business hours. ~~Providers~~ The Administration shall ~~be reimbursed~~ reimburse providers once for durable medical equipment (DME) during any ~~given two~~ 2 year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless authorized by the Administration, no more than ~~one~~ 1 repair and adjustment shall be reimbursed during any ~~two~~ 2-year period.

~~7. Early and periodic screening, diagnosis and treatment services (EPSDT). The maximum allowable rate for EPSDT screening and diagnostic services provided in conjunction with the Periodicity Schedule is $30.00.~~

~~8. Physician home visit. The maximum allowable rate for a medically necessary physician home visit shall be the capped fee-for-service rate.~~

C. Capped fee-for-service medical cost pool and payment. ~~A~~ The Administration may establish a capped fee-for-service medical cost pool ~~may be established~~ for each county in which there are capped fee-for-service physician contractors. ~~All~~ The Administration shall pay all physician fees ~~shall be paid~~ out of this pool. Fifteen percent of allowable physician fees shall be withheld in the pool. At the end of ~~the~~ a contract period, the Administration shall divide any surplus or deficit remaining in the pool ~~shall be divided~~ evenly between the Administration and the participating physicians subject to the following:

1. The ~~physician's withhold~~ physician withhold shall be used to offset the ~~physician's~~ physician portion of any deficit. ~~The physicians~~ Physicians shall not be responsible for any deficit greater than the aggregate amount withheld. ~~All~~ The Administration shall return all withholds not needed to fund a deficit ~~will be returned~~ to ~~the physician~~ physicians on a pro rata basis.
2. The Administration shall divide the physician portion of any surplus ~~shall be divided such that~~ so 2/3 goes to primary care physicians and 1/3 to referral physicians. These portions shall ~~then~~ be divided pro rata among the physicians in each category subject to an upper limit. The ~~physician's~~ physician portion of any surplus is limited so ~~that a~~ referral ~~physician~~ physicians ~~can~~ receive no more than 115% of the Administration's maximum allowable fees for their services and ~~a~~ primary care physicians receive no more than 130%.

D. Distribution of funds. ~~Annual~~ The Administration shall make annual settlements ~~shall be done~~ of the medical cost pool on an incurred basis. ~~Incurred~~ The Administration shall estimate incurred medical costs for ~~the~~ a contract period ~~shall be estimated~~ for settlement purposes when ~~three~~ 3 full months of paid claim data can be summarized following the end of the contract period. The settlement shall occur within 105 days following the end of the contract period.

E. The Administration reserves the right to adjust the percentage of withholding for any individual physician whose utilization rates are deemed to be excessive based on historical physician profiles.

R9-22-711. Copayments

A. Contractors shall be responsible for ~~the collection of~~ collecting copayments from members. The following are excluded from copayment requirements:
1. Prenatal care including all obstetrical visits~~.~~ ;
2. Well-baby, EPSDT care~~.~~ ;
3. ~~Members~~ Care in nursing facilities and intermediate care facilities for the mentally retarded~~.~~ ;
4. Visits scheduled by a primary care physician or practitioner, and not at the request of a member~~.~~ ; and
5. Drugs and medications beginning October 1, 1985.

B. Except as provided in subsection (A), contractors and members shall comply with the following copayment schedules:
1. Categorically eligible members

COVERED SERVICES	COPAYMENT
Doctor's office or home visit and all diagnostic and rehabilitative x-ray and laboratory services associated with ~~such~~ the visit.	$1.00 per visit
Nonemergency surgery ~~per procedure~~	$5.00 per procedure
Nonemergency use of the emergency room	$5.00 per visit

2. Indigent, medically needy, eligible assistance children, and eligible low-income children members:

COVERED SERVICES	COPAYMENT
Doctor's office or home visit and all diagnostic and laboratory services associated with ~~such~~ the visit.	$5.00 per visit
Nonemergency surgery	$5.00 per procedure
Nonemergency use of the emergency room	$5.00 per visit

C. ~~Members shall~~ A contractor shall ensure that a member is not ~~be~~ denied services because of ~~their~~ the member's inability to pay a copayment.

R9-22-715. Hospital Rate Negotiations

A. Effective for inpatient hospital admissions and outpatient hospital services on or after March 1, 1993, contractors that negotiate with hospitals for inpatient or outpatient services shall reimburse hospitals for member care based on the prospective tiered-per-diem amount, ~~or~~ the AHCCCS hospital-specific outpatient cost-to-~~change~~ charge ratio multiplied by ~~allowed~~ covered charges ~~set forth~~ in A.R.S. § 36-2903.01 and R9-22-712, or ~~at~~ the negotiated rate that, when considered in the aggregate with other hospital reimbursement levels, does not exceed what would have been paid ~~pursuant to~~ under A.R.S. § 36-2903.01 and R9-22-712. This subsection does not apply to hospitals participating in the pilot program under R9-22-718.

1. Contractors may engage in rate negotiations with hospitals at any time during the contract period.
2. Within 7 days of the completion of the agreement process, contractors shall submit copies of their negotiated rate agreements, ~~to include~~ including all rates, terms, and conditions, with hospitals to the Administration for approval. Contractors shall demonstrate to the Administration that the effect of their negotiated rate agreement will, when considered in the aggregate, be the same as or ~~will~~ produce greater dollar savings than ~~what~~ would have been paid ~~pursuant to~~ under A.R.S. § 36-2903.01 and R9-22-712.
   a. To demonstrate the aggregate effect of its negotiated rate agreement, contractors shall present their assumptions related to projected utilization of various hospitals to the Administration. The contractor may consider inpatient assumptions related to:
      i. Member mix;
      ii. Admissions by AHCCCS-specified tiers;
      iii. Average length of stay by tier and pattern of admissions, excluding emergency admissions;
      iv. Outliers; and
      v. Risk-sharing arrangements.

      The contractor also may consider outpatient assumptions related to member mix and outpatient service utilization. The Administration reserves the right to approve, deny, or require mutually-agreed-to modifications ~~to~~ of these assumptions.
   b. When ~~contractors adjust~~ a contractor adjusts or ~~modify their assumptions~~ modifies an assumption, the reason for the adjustment or modification shall be ~~included,~~ presented to the Administration, as well as the new ~~assumptions~~ assumption. ~~Any change in assumption is subject to approval, denial~~ The Administration may approve, deny, or require mutually-agreed-to modification ~~by the Administration~~ of an assumption.
   c. To determine whether ~~the~~ a negotiated rate agreement ~~produced~~ produces reimbursement levels that ~~did~~ do not in the aggregate exceed what would ~~have been~~ be paid ~~pursuant to~~ under A.R.S. § 36-2903.01 and R9-22-712, ~~contractors~~ a contractor shall require ~~their~~ its independent auditors to evaluate the reasonableness of ~~their~~ its assumptions as part of ~~the~~ its annual audit. The contractor shall ensure that its independent auditor's audit program ~~shall be~~ is consistent with AHCCCS audit requirements and ~~shall be~~ is submitted to the Administration for prior ~~approved by the Administration~~ approval.
   d. Negotiated inpatient or outpatient rate agreements with hospitals with ~~which~~ a contractor has a ~~related party~~ related-party interest are subject to additional related party disclosure and evaluation. These evaluations are in addition to the procedures described in subsection (A)(2)(c) and shall be performed by the contractor's independent auditors, or, at the contractor's option, ~~additional evaluations may be performed~~ by the Administration.
   e. The Administration ~~may~~ shall subject a contractor's independent auditor's report to any examination or review necessary to ensure accuracy of ~~any or~~ all findings related to aggregate rate determinations.
   f. The Administration shall use its standards, consistent with the Request for Proposals and R9-22-502, to determine whether a contractor's inpatient or outpatient hospital subcontractors will limit the availability or accessibility of services. The Administration reserves the right to reject hospital subcontracts that limit ~~a member's~~ the availability or accessibility of services.

B. The Administration may negotiate or contract with ~~hospitals~~ a hospital on behalf of ~~contractors~~ a contractor for discounted hospital rates and may require that the negotiated discounted rates be included in ~~contracts~~ a subcontract between ~~contractors~~ the contractor and ~~hospitals~~ hospital.

C. The Director shall apportion any cost avoidance in the hospital component of provider capitation rates between the Administration and provider. The Administration's portion of the cost avoidance shall be reflected in reduced capitation rates paid to providers.

R9-22-717. Hospital Claims Review

A. The Administration and its contractors shall review hospital claims ~~which~~ that are timely received as specified in R9-22-703(B).

B. ~~Charges~~ A charge for hospital services provided to an eligible ~~persons~~ person during a time when the eligible person was not the financial responsibility of the ~~entity receiving the claim~~ Administration shall be denied.

C. Personal care items supplied by ~~the hospitals~~ a hospital, including but not limited to the following, are not covered services:

1. Patient care ~~kits,~~ kit,
2. ~~Toothbrushes,~~ Toothbrush,
3. Toothpaste,
4. Petroleum jelly,
5. Deodorant,
6. Septi soap,
7. ~~Razors,~~ Razor,
8. Shaving cream,
9. Slippers,
10. Mouthwash,
11. Disposable ~~razors,~~ razor,
12. Shampoo,
13. Powder,
14. Lotion,
15. ~~Combs,~~ Comb, and
16. Patient ~~gowns.~~ gown.

D. The following hospital supplies and equipment, if medically necessary and ~~utilized, shall be~~ used, are covered services:

1. Arm ~~Boards,~~ board,
2. ~~Diapers,~~ Diaper,
3. ~~Underpads,~~ Underpad,
4. Special ~~mattresses~~ mattress and special ~~beds,~~ bed,

5. Gloves,
6. Wrist ~~restraints,~~ restraint,
7. Limb ~~holders,~~ holder,
8. Disposable ~~items~~ item used in lieu of a durable ~~items,~~ item,
9. Universal ~~precautions,~~ precaution,
10. Stat ~~charges,~~ charge, and
11. Portable ~~charges~~ charge.

E. The hospital claims review shall determine ~~if~~ whether services rendered were:
1. AHCCCS-covered services;
2. Medically necessary;
3. Provided in the most appropriate, cost-effective, least restrictive setting; and
4. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. §§ 36-2903.01(J) or 36-2904(K), whichever is applicable.

F. If a claim is denied by either the Administration or its ~~contractors~~ contractor, a grievance challenging the denial may be filed against the entity denying the claim. The grievance shall be filed no later than 12 months from the date of service, 12 months from the date of eligibility posting, or 35 days from the date of notice of adverse action, whichever is latest. ~~at least 35 days prior to the expiration of the 12 month time period specified in A.R.S. § 36-2904(H), then the grievance challenging such denial must be filed against the entity denying the claim no later than 12 months from the date of service. If the claim is denied less than 35 days prior to the expiration of the 12 month time period, the provider shall have 35 days from the date of the denial to file a grievance.~~ Any grievance challenging a postpayment review recoupment action ~~must~~ shall be filed by the provider no later than 12 months from the date of service, 12 months from the date of eligibility posting, or 35 days from the date of the notice of recoupment, whichever is latest.

~~G. For claims with dates of admission before March 1, 1993, and subject to the foregoing, charges for medically necessary hospital services shall not exceed charges on file with the Arizona Department of Health Services.~~

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected / Rulemaking Action

Sections Affected	Rulemaking Action
R9-28-702	Amend
R9-28-703	Amend
R9-28-704	Amend
R9-28-706	Amend
R9-28-707	Amend
R9-28-709	Amend
R9-28-710	Amend
R9-28-711	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2932.

Implementing statute: A.R.S. §§ 36-2903.01(L) and (O), 36-2932(J), 36-2942, 36-2944, 36-2945, 36-2947(B), and 36-2948.

3. **The effective date of the rules:**

September 22, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice Rulemaking Docket Opening: 1 A.A.R. 2764, December 22, 1995

Notice of Proposed Rulemaking: 3 A.A.R. 1016, April 11, 1997

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Cheri Tomlinson

Address: AHCCCS
801 East Jefferson, MD 4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

This Article was opened initially as a result of the 5-year rule review on March 30, 1995. Modifications were needed to the rule language because of contract provisions which are effective October 1, 1997. These rules compliment the content of the requirements of the RFP.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

   The impact of the proposed changes will be nominal. Individuals and entities that will benefit from the enhanced clarity and conciseness of the proposed language include:

   - AHCCCS,
   - ALTCS program contractors, and
   - ALTCS providers.
   - Over the long term, the transfer of processing and payment for medically necessary services provided to ventilator dependent members from AHCCCS to program contractors benefits all parties by streamlining the processing and payment of ALTCS member claims. The cost of this proposed change is nominal because program contractors already have claims processing and payment systems in place, and because the costs associated with these services will be included in program contractor capitation payments.
   - Individuals and entities that were considered but will not be directly affected include:
   - Taxpayers and the general public;
   - ALTCS members;
   - The business community, except for the 2 program contractors that are private business entities;
   - Political subdivisions;
   - Local governments, except for the counties that serve as program contractors; and
   - Other governmental agencies, except for DES/DDD, which is the program contractor for the developmentally disabled population.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

   The changes between the proposed rules and the final rules are minimal. This is primarily due to the fact that AHCCCS provided stakeholders with a "courtesy copy" of the rule packet prior to the public hearing held on May 23, 1997.

   The differences between the proposed rule and final rule include:

   - Grammatical, verb tense, and punctuation changes throughout;
   - Revised the language in R9-28-703(B)(1) to clarify that a contractor, provider, or noncontracting provider shall ensure that a claim is received no later than 9 or 12 months, as applicable, after the last date of service shown on the claim, or 9 or 12 months, as applicable, after the date of eligibility posting, whichever is greater;
   - Reorganized the format of the rule language in R9-28-703(C)(1) and (2) to make the rule more clear, concise, and understandable;
   - Cross-referenced the rule to statute in R9-28-710(B) to make the language more comprehensive; and
   - Revised the language in R9-28-710(C) to include both EPD and DD program contractors, which reflects the Administration's current practice.

10. **A summary of the principal comments and the agency response to them:**

    No public comments were received regarding this Article.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

    Not applicable.

12. **Incorporations by reference and their location in the rules:**

    None.

13. **Was this rule previously adopted as an emergency rule?**

    Not applicable.

14. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 7. STANDARDS FOR PAYMENTS

Section
R9-28-702. ~~Prohibition against charges to members or eligible persons~~ Prohibition Against Charges to Members or Eligible Persons
R9-28-703. Claims
R9-28-704. ~~Transfer of payments~~ Transfer of Payments
R9-28-706. Payments by the Administration for Services Provided to Eligible Persons
R9-28-707. ~~Program Contractor's Liability to Noncontracting Providers~~ Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care
R9-28-709. Reinsurance
R9-28-710. ~~Capitated payments to program contractors~~ Capitation Payments to Program Contractors
R9-28-711. Payments Made on Behalf of a Program Contractor; Recovery of Funds; Postpayment Reviews

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. ~~Prohibition against charges to members or eligible persons~~ Prohibition Against Charges to Members or Eligible Persons

A. ~~No~~ A program contractor, provider, or noncontracting provider shall not charge, submit a claim, demand, or otherwise collect payment from a member or eligible person or a person acting on behalf of a member or eligible person for any covered service other than for a ~~patient's~~ member's or eligible person's share of cost, authorized ~~co-payments~~ copayment, or payment for noncovered services. ~~Program contractors~~ A program contractor shall have the right to recover from a member that portion of payment made by a ~~third~~ 1st or 3rd party to the member when ~~the such~~ payment duplicates ALTCS-paid benefits.

B. ~~Program contractors, providers, and~~ A program contractor, provider, or noncontracting ~~providers~~ provider shall not bill or make any attempt to collect payment, directly or through a collection agency, from ~~a person~~ an individual claiming to be ALTCS eligible without 1st receiving verification from the Administration that the ~~person~~ individual was ineligible for ALTCS on the date of ~~services,~~ service, or that ~~services~~ service provided ~~were~~ was not covered by ALTCS~~.~~ , except as specified in subsection (A).

C. A program contractor, provider, or noncontracting provider may bill an eligible person or member for medical expenses incurred during a period of time when the individual willfully withheld material information pertaining to ~~his~~ the individual's ALTCS eligibility or enrollment.

R9-28-703. Claims

A. Program contractors. All claims for covered services rendered to ~~members~~ a member enrolled with a prepaid program contractor, shall be submitted to ~~such~~ the program contractor.

B. Providers and noncontracting providers. ~~All~~ A provider or noncontracting provider shall submit all claims for covered services rendered to an eligible ~~but not enrolled persons by providers or noncontracting providers shall be submitted~~ person to the Administration for payment in accordance with ~~A.A.C.~~ R9-22-703 and this Article.

~~1.~~C. Timeliness. ~~Claims for covered services provided ALTCS eligible individuals by~~ A program ~~contractors, providers,~~ contractor, provider, or noncontracting ~~providers~~ provider shall ensure that a claim for covered services provided to a member or eligible person is ~~be~~ initially received by the Administration ~~not~~ no later than ~~nine~~ 9 months after the last date of service shown on the ~~claim.~~ claim, or 9 months after the date of eligibility posting, whichever is later. ~~Additionally,~~ The Administration shall not consider a claim ~~shall not be considered~~ for payment unless ~~it~~ the claim is received by the Administration as a clean claim ~~not~~ no later than 12 months after the last date of service shown originally on the ~~claim.~~ claim, or 12 months after the date of eligibility posting, whichever is later.

1. Reinsurance claims shall be submitted to the Administration in accordance with R9-22-703.
2. ~~For the purpose of determining the date of receipt of a claim, the~~ The date of receipt of a claim is the date the Administration receives the claim. ~~Only claims received by the~~ The Administration shall consider for payment only claims received in accordance with the provisions of this ~~Section shall be considered for payment.~~ Section.

R9-28-704. ~~Transfer of payments~~ Transfer of Payments

A. Payments permitted. ~~When~~ In the following circumstances and when in the best interests of the state, the Administration or its contractors shall ~~be made~~ make payments to other than ~~the~~ a program contractor, ~~provider~~ provider, or noncontracting ~~provider as listed below:~~ provider:

1. When payment is ~~made~~ in accordance with an assignment to a government agency or an assignment made ~~pursuant to~~ under a court order; or
2. When payment is ~~made~~ to a business agent, such as a billing service or accounting firm, ~~or~~ that renders statements and receives payment in the name of the program contractor, noncontracting provider, or provider, providing that the agent's compensation for this service is:
   a. Reasonably related to the cost of processing the statements; and
   b. Not dependent upon the actual collection of payment.

B. When in the best interests of the state, the Administration or its contractors shall make payment to ~~physicians, dentists~~ a primary care provider, dentist or other health care ~~professionals shall be made~~ professional as follows:

1. To the employer of the ~~physician, dentist~~ primary care provider, dentist, or other health professional, if ~~such person~~ the health care professional is required, as a condition of employment, to turn over fees to ~~his or her~~ the employer;
2. To a foundation, plan, consortium, or other similar organization, including a health care service organization, ~~which~~ that furnishes health care through an organized health care delivery system, if there is a contractual arrangement between the organization and the ~~person~~ health care professional furnishing the services under which the organization bills or receives payment for ~~such~~ the services.

C. Payments prohibited. ~~Program contractors, providers~~ A program contractor, provider, or noncontracting ~~providers are prohibited from assigning~~ provider shall not assign all or part of ALTCS payments for covered services furnished to a member or eligible person to any party other than the ~~provider~~ program contractor, provider, or noncontracting provider except as specified in this Section.

D. Prohibition of payments to factors. ~~Payment~~ A program contractor, provider, or noncontracting provider shall not make payment for covered services furnished to a member or eligible person ~~by a program contractor, provider or noncontracting provider shall not be made to,~~ to or through a factor, either directly, or by virtue of a power of attorney given to the factor.

R9-28-706. Payments by the Administration for Services Provided to Eligible Persons

A. Payment for medically necessary outpatient services.
1. ~~Medically~~ The Administration shall pay for medically necessary outpatient services provided to eligible persons from the effective date of eligibility to the date of enrollment with a program contractor ~~shall be paid~~ at the negotiated rate, capped fee-for-service rate, or billed charges, whichever is ~~lower~~ lowest.
2. Eligible persons residing in areas that are not served by ~~ALTCS~~ program contractors shall be eligible for ALTCS covered services. ~~Payment~~ The Administration shall make payment for medically necessary outpatient services provided to ~~such~~ these individuals ~~shall be made~~ at the negotiated rate, capped fee-for-service rate, or billed charges, whichever is ~~lower~~ lowest.
3. ~~Medically~~ The Administration shall pay for medically necessary outpatient services provided to eligible persons ~~or members~~ by out-of-state providers ~~shall be paid~~ at the capped fee-for-service rate ~~pursuant to~~ under R9-28-708 or the Medicaid rate that is in effect at the time services are provided in the state in which the provider is located, whichever is lower.

B. The Administration shall make payment in accordance with R9-22-712 for covered hospital services provided to eligible persons on or after March 1, 1993.

~~B. Payment for covered hospital services provided to ALTCS eligible persons on or after October 1, 1988, until January 1, 1991.~~
~~1. Hospital inpatient, outpatient and emergency services provided to ALTCS eligible persons by out of state hospitals will be paid at negotiated discounted rates, 80% of billed charges or the Medicaid rate that is in effect at the time services are provided in the state in which the hospital is located, whichever is lowest.~~
~~2. Except as provided in Subsection (C) of this Section, payment of hospital inpatient services provided to ALTCS eligible persons by in state, nonfederal hospitals will be based on the adjusted billed charge factor in effect for that hospital at the time services are rendered.~~
~~3. The date for purposes of determining the timeliness discount of adjusted billed charges that will be paid is the date the claim is determined to be clean by the Administration. The Administration shall not pay a hospital's adjusted billed charges in excess of the following:~~
~~a. If the hospital's bill is paid within 30 days of the date of the receipt of a clean claim, 85% of the adjusted billed charges.~~
~~b. If the hospital's bill is paid any time after 30 days through 60 days of the date the bill was received, 95% of the adjusted billed charges.~~
~~c. If the hospital's bill is paid any time after 60 days of the date the bill was received, 100% of the adjusted billed charges.~~
~~4. The date of receipt of hospital claims is the date the claim was received by the Administration as indicated by the date stamp on the claim and the claim reference number. Hospital claims shall be considered paid on the date indicated on disbursement checks. Denied claims shall be considered adjudicated on the date of their denial. Claims that are rejected or require additional supporting documentation from hospitals shall receive new date stamps. Only valid clean claims that are submitted in accordance with ALTCS rules and represent charges for the provision of hospital services to individuals who have been determined ALTCS eligible will be processed.~~
~~5. Payments pursuant to paragraphs (2) and (3) of this subsection shall not exceed the schedule of rates and charges that hospitals had in effect, as filed with the Department of Health Services, as of the date of service.~~

~~C. Payment for covered hospital services provided to eligible persons on or after January 1, 1991, until March 1, 1993.~~
~~1. Hospital inpatient, outpatient and emergency services provided to eligible persons by out of state hospitals shall be paid at negotiated discounted rates, 80% of allowed billed charges or the Medicaid rate that is in effect at the time services are provided in the state in which the hospital is located.~~
~~2. Payment of hospital inpatient, outpatient and emergency services provided to eligible persons by in state, non federal hospitals shall be based on the reimbursement level in effect on December 31, 1990, increased by 2 1/2%, and according to the requirements set forth in paragraphs (B) (3) through (5).~~
~~3. Payment of hospital inpatient services under this subsection shall continue for all admissions prior to March 1, 1993, including such admissions with discharge dates on or after March 1, 1993.~~

~~D~~ C. Limitation on payment for hospital services. The Administration may limit payment for hospital services furnished to hospital inpatients who require a lower covered level of care, such as nursing facility services, ~~for~~ to the cost of the lower or alternative ~~levels~~ level of care, ~~that is, services furnished to hospital inpatients who require a lower covered level of care, such as skilled nursing or intermediate care services,~~ when the Director or his designee determines ~~such~~ the less costly ~~alternatives~~ alternative could and should have been ~~utilized~~ used by a hospital.

R9-28-707. ~~Program Contractor's Liability to Noncontracting Providers~~ Contractor's Liability to Hospitals for the Provision of Emergency and Subsequent Care

A. ~~For purposes of~~ The program contractor ~~liability, an~~ is responsible for providing emergency medical or acute ~~mental~~ behavioral health ~~condition shall be subject to reimbursement~~ care to a member only until ~~such~~ the time ~~as~~ the ~~patient's~~ member's condition is stabilized and the ~~patient~~ member is transferable, or until the ~~patient~~ member is discharged following stabilization subject to the requirements of A.R.S. § 36-2909(B) and Article 2 of this Chapter.

B. Subject to subsection (A), ~~in the event that~~ if a member cannot be transferred following stabilization to a facility ~~which~~ that has a subcontract with ~~the~~ a program contractor, ~~following stabilization,~~ the program contractor shall pay for all treatment that is appropriately documented, medically necessary treatment, ~~prior~~ and prior authorized in accordance with R9-22-705, provided ~~such~~ to the member ~~prior to~~ before the date of discharge or transfer in accordance with payment standards in R9-22-705.

C. ~~In the event that~~ If a member refuses transfer from a noncontracting provider institution to an institution affiliated with the member's program contractor, neither the Administration

nor the program contractor shall be liable for any costs incurred subsequent to the date of refusal when:

1. Subsequent to consultation with ~~his~~ the member's program contractor, the member continues to refuse the transfer; and
2. The member ~~has been~~ is provided and signs a written statement, ~~prior to~~ before the date of transfer of liability, informing ~~him~~ the member of the medical and financial consequences of ~~such refusal~~ refusing to transfer. If the member refuses to sign ~~a~~ the written statement, ~~then~~ a statement signed by ~~two~~ 2 witnesses indicating that the member was informed may be substituted.

R9-28-709. Reinsurance

A. Program contractor acquired reinsurance. A program contractor may obtain reinsurance for coverage of ~~capitated members.~~ services provided to members enrolled with the program contractor. ~~A program contractor shall not obtain reinsurance to reduce liability below 25% of the applicable reinsurance level during any ALTCS contract year. This limitation shall not apply to reinsurance obtained by a program contractor to cover the cost of services provided by noncontracting providers to members under emergency circumstances.~~

B. Administration reinsurance. For purposes of the Administration's reinsurance program, the insured entity shall be a program contractor.

~~1. Medical services costs qualifying for reinsurance shall have been incurred during the contract year or such part of that year in which the individual member is enrolled with the contractor. Any movement of a member from membership with one program contractor to membership with another program contractor shall be cause for the resetting of the deductible level.~~

~~2. The program contractor shall notify the Administration when an individual member's incurred costs for inpatient, emergency and certain outpatient services, as prescribed in subsection (C)., reach 60% of the applicable deductible level.~~

1. Reimbursement of covered services shall be subject to a deductible as specified in contract. The deductible shall be reset at the beginning of each contract year and when a member changes program contractors. Allowable costs in excess of the deductible amount shall have a reinsurance percentage as specified in contract applied to calculate the reimbursement amount. Medicare and other 1st-and 3rd-party payments shall be deducted from allowable costs before calculating the reimbursement amount.
2. Acute inpatient and psychiatric facility services provided while a member is enrolled with a program contractor are covered services for purposes of reinsurance reimbursement.
3. Services reimbursed under the reinsurance benefit are subject to medical review by the Administration. Reimbursement may be denied, payment levels reduced, or financial sanctions imposed upon a program contractor when medical review results in identification of services that could have been provided in a less costly, medically appropriate manner. Medical review and resulting adjustments to reimbursement shall be in accordance with contract.
4. Inpatient encounter data submitted by a program contractor shall be used by the Administration to identify reinsurance cases that exceed the deductible amounts and are subject to reimbursement.
5. A program contractor shall make available to the Administration upon request documentation to support:
   a. The services provided,
   b. The reimbursement for those services, and
   c. Attempts to recover the cost of those services from other payors.
6. The Administration may require contractual terms that prescribe special reinsurance requirements for catastrophic cases. The requirements may include:
   a. Conditions under which a case is considered catastrophic,
   b. Claim and documentation requirements, and
   c. The method and amount of reimbursement for catastrophic cases.

~~C. Coinsurance and deductible levels for eligible members.~~

~~1. Coinsurance. As set forth in contract, the Administration shall pay the percentage of costs in excess of the applicable deductible level incurred in the provision of, or payment for, covered inpatient, emergency and certain outpatient services approved by the Director pursuant to A.R.S. §36-2906.(D). These include dialysis services not covered by Title XVIII, total parenteral nutrition, and other ambulatory services.~~

~~2. Deductible. The program contractor is responsible for payment of the deductible.~~

~~D. Costs in excess of the deductible level shall be paid based upon charges adjudicated or paid by the program contractor, or the ALTCS fee schedule, whichever is less, minus the applicable coinsurance and third party reimbursements.~~

~~1. The contractor shall provide evidence that costs incurred have been adjudicated or paid by the program contractor prior to submitting reinsurance claims.~~

~~2. Third party collections shall reduce the reinsurance claim on a dollar for dollar basis.~~

~~3. Payments made for program contractor purchased reinsurance are not considered third party collections for the purpose of Administration reinsurance.~~

~~E. Claims submission. A program contractor shall be responsible for the preparation, review, verification, certification and submission of reinsurance claims to the Administration.~~

~~1. The program contractor shall certify the validity of services rendered and that the services were medically necessary and within the scope of ALTCS benefits.~~

~~2. The program contractor shall submit reinsurance claims on forms prescribed by the Administration.~~

~~3. The program contractor shall initiate and adjudicate all claims for probable third party liability prior to submitting a reinsurance claim to the Administration, except for claims involving liability of underinsured or uninsured motorist insurance, third party liability insurance and tort feasors.~~

~~4. The program contractor shall submit all claims not later than nine months after the close of the contract year in which the service is rendered.~~

~~F. Claims processing. The Administration shall be responsible for processing the Administration reinsurance claims submitted by the program contractor.~~

~~1. The Administration shall accept for processing only those claims which are submitted directly by an ALTCS program contractor and which comply with the conditions set forth in subsections (B), (C), (D), and (E) of this Section.~~

~~2. The Administration shall establish and maintain separate records of all reinsurance claims submitted and~~

~~reviewed, and of all payments made to the contractor as a result of such claims.~~

~~3. Program contractors shall be subject to utilization and other evaluative reviews by the Administration of care provided to a member which results in a reinsurance claim.~~

~~G. Payment of claims. The Administration shall reimburse the program contractor for costs incurred in excess of the applicable deductible level calculated according to the provisions of subsection (D) of this Section.~~

~~H. The Administration may limit reinsurance reimbursement to reimbursement for lower or alternative levels of care when the Director or his designee determines such less costly alternatives could and should have been utilized by a program contractor. A program contractor whose claims are reduced or denied shall be notified in writing by the Administration. Such notification shall include the cause for reduction or denial and describe the applicable appeal process pursuant to Article 8 of this Chapter.~~

~~I. The Administration may require contractual terms that prescribe special reinsurance requirements for catastrophic cases. The determination of whether a case or type of case is catastrophic shall be made by the Director based on the following criteria:~~

~~1. Severity of medical condition, including prognosis;~~

~~2. Average length of hospitalization and medical care in Arizona for the type of case under consideration;~~

~~3. Average cost of hospitalization and medical care in Arizona for the type of case under consideration.~~

R9-28-710. ~~Capitated payments to program contractors~~ Capitation Payments to Program Contractors

A. ~~All~~ The Administration shall make all payments to a program ~~contractors shall be made pursuant to~~ contractor in accordance with the terms and conditions of ~~contracts~~ the contract executed between the program contractor and the Administration and ~~in accordance with~~ this Chapter.

B. ~~Capitation shall be paid~~ The Administration shall pay capitation monthly to ~~those~~ a program ~~contractors~~ contractor who ~~have either posted required performance bonds or have otherwise provided security to the Director.~~ has met the requirements in A.R.S. § 36-2942(8).

C. ~~Program contractors for the elderly and physically disabled shall be paid~~ The Administration shall pay a program contractor a capitated amount per ~~enrolled individual~~ member per month. Administrative costs shall be incorporated into the capitation payment amount.

~~D. Program contractors shall be paid on a fee-for-service basis for approved services rendered to ventilator dependent individuals.~~

R9-28-711. Payments Made on Behalf of a Program Contractor; Recovery of Funds; Postpayment Reviews

A. The Administration may make payments on behalf of a program contractor and may recover funds from a program contractor or ~~subcontracting~~ provider in accordance with standards ~~set forth~~ in ~~A.A.C.~~ R9-22-713. For purposes of this Section, the term "contractor" as it appears in ~~A.A.C.~~ R9-22-713 ~~shall mean~~ means "program contractor".

B. The Administration shall conduct postpayment reviews of claims paid by the Administration and shall recoup any monies erroneously paid. Program contractors may conduct postpayment reviews of claims paid by program contractors and may recoup any monies erroneously paid.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. Sections Affected / Rulemaking Action

Article 4	Amend
R15-5-403	Amend
R15-5-404	Amend
R15-5-406	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 42-105, 42-1303

Implementing statute: A.R.S. § 42-1310.13

3. **The effective date of the rules:**

September 22, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 1 A.A.R. 1781, October 6, 1995.

Notice of Rulemaking Docket Opening: 3 A.A.R. 372, February 7, 1997.

Notice of Proposed Rulemaking: 3 A.A.R. 826, March 21, 1997.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Ernest Powell, Tax Analyst

Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The rules provide guidance in the application of transaction privilege tax to persons engaged in business under the amusement classification. The rules are adopted as amended to incorporate legislative changes and to conform to current rulemaking guidelines.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business, and consumer impact:**

Identification of the Rulemaking:

In 1994, the Arizona Legislature enacted A.R.S. § 42-1310.13(B)(1) that provides a deduction from the tax base under the amusement classification for the gross income from membership fees, which provide for the right to use a health or fitness establishment or a private recreational establishment. Health or fitness establishment is defined under A.R.S. § 42-1310.13(C)(1) and private recreational establishment is defined under A.R.S. § 42-1310.13(C)(2). The Department has adopted as amended R15-5-406 to incorporate this legislative change.

In addition, the Department has adopted as amended the rules to conform to current rulemaking guidelines.

Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current rulemaking guidelines which will make the rules clearer and easier to understand. In addition, the amendment of R15-5-406 will benefit the public by making the rule conform with current statutes. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

None.

10. **A summary of the principal comments and the agency response to them:**

The Department did not receive any written or oral comments on the rule action after the publication of the rulemaking in the Notice of Proposed Rulemaking.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

12. **Incorporations by reference and their location in the rules:**

None.

13. **Was the rule previously adopted as an emergency rule?**

No.

14. **The full text of the rules follows:**

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 4. ~~SALES TAX --~~ AMUSEMENT ~~AMUSEMENTS~~ CLASSIFICATION

Section

R15-5-403. Amusement Devices ~~machines~~

R15-5-404. Other Income

R15-5-406. Health or Fitness Establishments and Private ~~club~~ Recreational ~~recreational~~ Establishments ~~facilities~~

ARTICLE 4. ~~SALES TAX --~~ AMUSEMENT ~~AMUSEMENTS~~ CLASSIFICATION

R15-5-403. Amusement Devices ~~machines~~

Gross proceeds of sales or gross income ~~Income~~ from the operation of coin-operated and other devices ~~machines~~ which provide amusement are ~~is~~ included in the tax base ~~taxable~~ under the amusement ~~this~~ classification. Examples of such devices include:

devices that play prerecorded music ~~record players~~, electronic games, pinball games, and billiard tables.

1. The tax base from the business of operating amusement devices ~~taxable income from the operation~~ is the gross amount received from the amusement devices without deduction for commissions paid, rental cost for the equipment, or other expenses.
2. The ~~Liability for payment of the tax rests with the operator of the machines. For purposes of this rule, "operator" shall mean the~~ individual having direct control of the funds generated by the amusement devices ~~machines~~ shall pay the tax to the Department.

R15-5-404. Other Income

Gross receipts from the sale of programs, souvenirs, or any other items of tangible personal property are ~~shall be~~ included in the tax base ~~taxable~~ under the retail classification.

R15-5-406. Health or Fitness Establishments and Private ~~club~~ Recreational ~~recreational~~ Establishments ~~facilities~~

A. The operator of a "health or fitness establishment" or a "private recreational establishment", as defined in A.R.S. § 42-1310.13(C), shall exclude from the tax base under the amusement classification all gross proceeds of sales or gross income from membership fees and initiation fees which provide for the right to use the establishment, or any portion of the establishment, for 28 days or more, and fees charged for the use of the establishment by bona fide accompanied guests of members. Any other fees for the use of a health or fitness establishment or a private recreational establishment, or any portion of such an establishment, are included in the tax base of the amusement classification.

B. The Department shall not consider the gross proceeds of sales or gross income derived from other businesses that are on the premises of a health, fitness or recreational business when determining whether a health, fitness, or recreational business meets the qualifications of a "health or fitness establishment" or a "private recreational establishment" if the other businesses are separate and independent from the health, fitness, or recreational business. Whether the other businesses are separate and independent depends upon the facts in each case. The Department considers several factors in making this determination including but not limited to the following:

1. Whether the business is open to both members and nonmembers.
2. Whether the primary purpose of the business is closely related to the primary purpose of the health, fitness, or recreational business.
3. Whether the business could exist without the health, fitness, or recreational business.
4. Whether the business shares assets or employees with the health, fitness, or recreational business. ~~Private clubs operating recreational facilities, such as golf courses, tennis courts, and swimming pools, which are open and available to the public at large, are subject to tax on income from fees and charges for such facilities. When these charges are included as part of the membership dues, such income is not taxable.~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 10. WASTEWATER MANAGEMENT AUTHORITY OF ARIZONA

PREAMBLE

1. Sections Affected / Rulemaking Action

Chapter 10	Repeal
Article 1	Repeal
R18-10-101	Repeal
R18-10-102	Repeal
R18-10-103	Repeal
R18-10-104	Repeal
R18-10-105	Repeal
R18-10-106	Repeal
R18-10-107	Repeal
R18-10-108	Repeal
R18-10-109	Repeal
R18-10-110	Repeal
R18-10-111	Repeal
R18-10-112	Repeal
R18-10-113	Repeal
R18-10-114	Repeal
R18-10-115	Repeal

2. **The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**

   Authorizing & Implementing statutes: A.R.S. §§ 49-373(B)(7), 49-374, 49-374.01, and 49-376

3. **The effective date for the rules:**

   September 23, 1997.

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 1419, May 30, 1997.

Notice of Proposed Rule: 3 A.A.R. 1386, May 30, 1997.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Primary Name:	Lynn A. Keeling *on behalf of the Board of Directors of the Water Infrastructure Finance Authority*
Address:	Arizona Department of Environmental Quality 3033 North Central Avenue Phoenix, Arizona 85012
Telephone:	(602) 207-2223, (800) 234-5677 ext. 2223 (Arizona only)
Fax:	(602) 207-2251
TTD:	(602) 207-4829
Secondary Name:	Greg Swartz
Address:	Water Infrastructure Finance Authority 3033 North Central Avenue Phoenix, Arizona 85012
Telephone:	(602) 207-4707, (800) 234-5677 ext. 4707 (Arizona only)
Fax:	(602) 207-4888
TTD:	(602) 207-4829

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

During the 43rd Legislative Session, Laws 1997, Ch. 130, was passed. The governor signed this bill into law on April 22, 1997. The law became effective April 22, 1997, due to an emergency enactment. This legislation renamed the Wastewater Management Authority of Arizona as the Water Infrastructure Finance Authority of Arizona (WIFA). Prior to this legislation, WIFA operated as a financing organization for wastewater treatment systems and nonpoint source projects. The new Authority now finances public drinking water facilities as well as wastewater facilities.

When a board or agency changes its function, it becomes a new organization. WIFA's purpose for loaning money has not changed, but the recipients of financial assistance and the funding sources have been expanded. This change is accomplished by repealing the Wastewater Management Authority and its rules, and creating a new Chapter.

The following list represents the move of all repealed language from this Chapter to Chapter 15. There is no omission of the repealed language in the new chapter and no new requirements for the financing of wastewater and nonpoint source projects, just additional language to fully explain the current process.

Repealed Rules		New Section
R18-10-101.	Definitions	R18-15-101
R18-10-102.	Types of Financial Assistance Available	R18-15-201
		R18-15-301
		R18-15-401
R18-10-103.	Eligibility Criteria for Financial Assistance	R18-15-202
		R18-15-302
		R18-15-402
R18-10-104.	Priority List	R18-15-204
		R18-15-304
R18-10-105.	Priority Classes	R18-15-205
		R18-15-305
R18-10-106.	Priority List Ranking Criteria	R18-15-206
		R18-15-306
R18-10-107.	Financial Capability Criteria	R18-15-104
R18-10-108.	Environmental Review	R18-15-107
R18-10-109.	Application Process	R18-15-102
R18-10-110.	Federal Requirements	R18-15-208
		R18-15-308
R18-10-111.	Project Construction	R18-15-207
		R18-15-307
R18-10-112.	Fund Disbursements and Repayments	R18-15-110
R18-10-113.	Fund Administration	R18-15-111
R18-10-114.	Intended Use Plan and Interest Rate Determinations	R18-15-203
		R18-15-303
R18-10-115.	Disputes	R18-15-112

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
   Not Applicable.

8. A summary of the economic, small business and consumer impact:
   This rule contains the process for public financing of wastewater treatment and nonpoint source projects. Due to a legislative change, Laws 1997, Ch. 130, the Wastewater Management Authority was given additional authority, a new name, "Water Infrastructure Finance Authority", and new members were added to the authority. Due to the substantial changes to the authority, this Chapter is repealed, but replaced in its entirety with the new authority in 18 A.A.C. 15. Therefore, there is no economic impact from this repeal. A copy of the full economic impact statement may be obtained by contacting Lynn Keeling at (602) 207-2223, or within Arizona 1-800-234-5677, ext. 2223, or Greg Swartz at (602) 207-4707, or within Arizona 1-800-234-5677, ex. 4707.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:
   None.

10. A summary of the principal comments and the agency response to them:
    No comments were received.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules.
    Not applicable.

12. Incorporation by reference and their location in the rules.
    Not applicable.

13. Was this rule previously adopted as an emergency rule and, if so, was the text changed between adoption as an emergency and the adoption of these final rules?
    No.

14. The full text of the rule:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 10. ~~WASTEWATER MANAGEMENT AUTHORITY OF ARIZONA~~

~~ARTICLE 1. FINANCING WASTEWATER TREATMENT FACILITIES AND NONPOINT SOURCE PROJECTS~~ REPEALED

~~R18-10-101. Definitions~~ Repealed
~~R18-10-102. Types of Financial Assistance Available~~ Repealed
~~R18-10-103. Eligibility Criteria for Financial Assistance~~ Repealed
~~R18-10-104. Priority List~~ Repealed
~~R18-10-105. Priority Classes~~ Repealed
~~R18-10-106. Priority List Ranking Criteria~~ Repealed
~~R18-10-107. Financial Capability Criteria~~ Repealed
~~R18-10-108. Environmental Review~~ Repealed
~~R18-10-109. Application Process~~ Repealed
~~R18-10-110. Federal Requirements~~ Repealed
~~R18-10-111. Project Construction~~ Repealed
~~R18-10-112. Fund Disbursements and Repayments~~ Repealed
~~R18-10-113. Fund Administration~~ Repealed
~~R18-10-114. Intended Use Plan and Interest Rate Determinations~~ Repealed
~~R18-10-115. Disputes~~ Repealed

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 10. ~~WASTEWATER MANAGEMENT AUTHORITY OF ARIZONA~~

~~ARTICLE 1. FINANCING WASTEWATER FACILITIES AND NONPOINT SOURCE DISCHARGE PROGRAMS~~

R18-10-101. ~~Definitions~~ Repealed

~~In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, the terms of this Article, unless otherwise specified, have the following meanings:~~

~~1. "Applicant" means any governmental unit, identified in the Nonpoint Source Program, that is seeking financial assistance from the fund pursuant to the provisions of this Article.~~
~~2. "Application" means a request for financial assistance submitted to the Board, by an applicant.~~
~~3. "Approval to Construct" means the written approval issued by the Department to an applicant or recipient indicating that project construction may begin.~~
~~4. "Authority" means the Wastewater Management Authority of Arizona pursuant to A.R.S. § 49-371.~~
~~5. "Board" means the Board of directors of the authority pursuant to A.R.S. § 49-371.~~
~~6. "Certified Water Quality Management Plan" means a plan prepared by the designated Water Quality Management Planning Agency, pursuant to § 208 of the Clean Water Act, and certified by the Governor.~~
~~7. "Clerk" means the Clerk of the Board of the Wastewater Management Authority of Arizona.~~
~~8. "Collector" means a network of pipes or sewers used to collect and transport wastewater to a treatment plant or disposal system.~~
~~9. "Construction" means, for a project, any placement, assembly, or installation of a building, structure, equipment, treatment process, or water pollution control activity.~~
~~10. "Design life" means the period during which a treatment works is planned and designed to be operated.~~

11. "Designated Water Quality Management Planning Agency" means a single representative organization designated by the Governor pursuant to § 208 of the Clean Water Act to develop a Certified Water Quality Management Plan for the area.
12. "Disbursement" means the transfer of cash from the fund to a recipient.
13. "EPA" means the United States Environmental Protection Agency and its successor.
14. "Equivalency Project" means a wastewater treatment facility under § 212 of the Clean Water Act constructed in whole or in part before October 1, 1994, with funds equaling the amount of the federal capitalization grant.
15. "Federal capitalization grant" means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the fund.
16. "Financial assistance" means the use of monies in the fund for any of the purposes identified in R18-10-102.
17. "Financial assistance agreement" means any agreement, including a loan repayment agreement, that defines the terms for financial assistance given pursuant to this Article.
18. "First Use Project" means a project identified by EPA and the state as part of the National Municipal Policy List for the state.
19. "Fund" means the wastewater treatment revolving fund established pursuant to A.R.S. § 49-374.
20. "Governmental unit" means a political subdivision or Indian tribe that may receive financial assistance from the Authority pursuant to A.R.S. § 49-373.
21. "Infiltration" means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes.
22. "Intended Use Plan" means the document prepared by the Board for submittal to EPA identifying the intended uses of the fund pursuant to R18-10-114.
23. "Interceptor" means a sewer which is designed for 1 or more of the following purposes:
    a. To intercept wastewater from a final point in a collector and convey such wastes directly to a treatment facility or another interceptor;
    b. To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector or interceptor for conveyance to a treatment plant;
    c. To transport wastewater from 1 or more municipal collectors to another municipality or to a regional plant for treatment; and
    d. To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
24. "Nonpoint Source Program" means Arizona's Nonpoint Source Program, approved by EPA under § 319 of the Clean Water Act for controlling pollution from nonpoint sources.
25. "Priority List" means the ranking of wastewater treatment facility projects developed by the Board pursuant to R18-10-104 and the ranking of nonpoint source projects developed pursuant to the administration of the Nonpoint Source Program.
26. "Project" means any distinguishable segment or segments of a wastewater treatment facility or the Nonpoint Source Program which can be bid separately and for which financial assistance is being requested or provided.
27. "Project completion" means the date, as determined by the Department after consultation with the applicant or recipient, that operation of the project is initiated or is capable of being initiated, whichever occurs 1st.
28. "Recipient" means an applicant who has entered into a financial assistance agreement with the Authority.
29. "Replacement" means obtaining and installing equipment or accessories which are necessary during the design and operation of the treatment works to maintain the capacity and performance for which such works were designed and constructed.
30. "Regulatory authority" means the Department, EPA, the Department of Health Services, a county, city, or other local health department, a county environmental agency, or a sanitary district.
31. "State match" means the monies deposited into the fund that may be used to meet the requirements of § 602(b)(2) of the Clean Water Act.
32. "Treatment works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement § 201 of the Clean Water Act, or necessary to recycle or reuse water over the design life of the works.
33. "User charge" means a charge levied on users of a treatment works.

R18-10-102. Types of Financial Assistance Available Repealed

A. The Authority may use the fund for the following purposes:
    1. Financial assistance, which includes any 1 of the following:
        a. Loans consistent with § 603(d)(1) of the Clean Water Act;
        b. The purchase or refinance of local debt obligations which were incurred after March 7, 1985, if building began after that date;
        c. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
        d. Security as a source of repayment of principal and interest on bonds issued by the Authority provided that the net proceeds of the bonds are deposited in the fund;
        e. Guarantees of debt obligations by governmental units which are issued to finance eligible projects;
    2. Investments to earn interest to be deposited into the fund; or
    3. Payments of costs to administer the fund and the activities described in this Article;
B. The Board shall describe projects and proposed financial assistance in its Intended Use Plan, developed pursuant to R18-10-114.

R18-10-103. Eligibility Criteria for Financial Assistance Repealed

A. To be eligible to receive financial assistance an applicant shall propose a project for either of the following purposes:
    1. The planning, design, construction, or refinancing of treatment works which are all or part of a wastewater treatment facility owned by a governmental unit; or
    2. Water pollution controls as identified by Arizona's Non-

~~point Source Management Plan.~~

~~B. A project eligible under subsection (A)(1) of this Section shall also meet all of the following applicable requirements prior to receiving financial assistance:~~

~~1. The project shall appear on the Priority List developed pursuant to R18-10-104;~~

~~2. The applicant shall demonstrate the financial capability pursuant to R18-10-107;~~

~~3. The applicant shall complete or shall be in the process of completing the environmental review process described in R18-10-108 for all design and construction projects. Until the environmental review process is completed, the Board shall limit payments of financial assistance to pre-construction activity;~~

~~4. The applicant shall obtain or shall be in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities. Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to pre-construction activity;~~

~~5. The applicant shall ensure that the proposed design or construction of the project is consistent with the Certified Water Quality Management Plan; and~~

~~6. The applicant shall ensure that the project is consistent with applicable requirements of Title VI of the Clean Water Act.~~

~~C. A governmental unit that has proposed a project pursuant to subsection (A)(2) of this Section shall also meet all of the following requirements prior to receiving financial assistance:~~

~~1. The applicant shall demonstrate the financial capability under this Article, including all the following:~~

~~a. Identification of the dedicated revenue source for repayment of the financial assistance;~~

~~b. Demonstration of the legal authority to enter into financial agreements with the Authority; and~~

~~c. Development of any needed construction, operation, and maintenance associated with the Nonpoint Source Program project;~~

~~2. The applicant shall obtain or be in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities;~~

~~3. The applicant shall ensure that the project is consistent with the Certified Water Quality Management Plan; and~~

~~4. The applicant shall ensure that the project is consistent with § 319 and Title VI of the Clean Water Act.~~

~~D. The Board shall provide financial assistance to eligible governmental units for proposed projects in priority order according to the priority list developed pursuant to R18-10-104. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the Priority List in rank order that is ready to accept financial assistance.~~

R18-10-104. ~~Priority List~~ Repealed

~~A. Each year the Board shall adopt the Priority List for the next fiscal year. The Board shall not adopt a new list for years where funds are not adequate to assist any projects. The fiscal year is the state fiscal year.~~

~~B. When the Priority List is required pursuant to subsection (A), the list of wastewater treatment facility projects shall consist of 2 parts:~~

~~1. Part 1, a list of those wastewater treatment facility projects where the start of construction is planned within 5 years and that are under development or have been scheduled as part of an applicant's capital improvement plan. The Board shall rank this 5-year list by priority class, priority points, and year; and~~

~~2. Part 2, a list of all other wastewater treatment facility projects ranked by priority class and priority points.~~

~~C. Applicants, desiring placement on the Priority List, shall make their request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit the following information:~~

~~1. A brief description of the project indicating category of need, such as secondary treatment, advanced treatment, or collection system;~~

~~2. A brief description of the water quality or public health problem to be addressed by the project;~~

~~3. Estimated costs associated with the project, including applicable planning, design, and construction; and~~

~~4. A project schedule.~~

~~D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C) of this Section, all requests made by regulatory authorities, all plans prepared pursuant to the Clean Water Act, and the most recently adopted Priority List.~~

~~E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting in newspapers statewide at least 45 days prior to the meeting date and make copies of the draft Priority List available to the public at least 30 days prior to the meeting date.~~

~~F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall also consider the criteria identified in subsection (C) of this Section. The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the fund during the following fiscal year.~~

~~G. The Board shall make additions or modifications to the Priority List whenever any 1 of the following conditions are met:~~

~~1. The project meets the criteria for Priority Class A specified in R18-10-105(B);~~

~~2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match; or~~

~~3. The additions or modifications are made by the Board at a public meeting.~~

~~H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:~~

~~1. The project has received all financial assistance from the fund requested by the applicant;~~

~~2. The project has been financed with long-term indebtedness from another source;~~

~~3. The project is no longer an eligible project; or~~

~~4. The applicant requests removal.~~

~~I. The Board shall retain a project on the Priority List in its assigned priority ranking if it is bypassed pursuant to R18-10-103(D).~~

R18-10-105. ~~Priority Classes~~ Repealed

~~A. The Board shall evaluate each wastewater treatment facility project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may re-evaluate project priority classes under R18-10-104(G) when supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under R18-10-108. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.~~

~~B. The Board may designate a project as Priority Class A if both the following conditions exist:~~

~~1. The goal of the project is to eliminate either:~~

~~a. An environmental nuisance as defined in A.R.S. § 49-141; or~~

~~b. A public health hazard declared by a regulatory authority; and~~

~~2. Corrective action or mitigation measures have been initiated as evidenced by 1 of the following:~~

~~a. An administrative order issued by a regulatory authority;~~

~~b. A court order or decision;~~

~~c. A voluntary compliance agreement with a regulatory authority;~~

~~d. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development; or~~

~~e. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.~~

~~C. The Board may designate a project as Priority Class B if the goal of the project is to eliminate a violation of water quality standards documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 of the following:~~

~~1. An administrative order issued by a regulatory authority;~~

~~2. A court order or decision;~~

~~3. A voluntary compliance agreement with a regulatory authority;~~

~~4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development; or~~

~~5. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.~~

~~D. The Board may designate a project as Priority Class C if the goal of the project is to correct water quality which violates applicable permit requirements. The Board shall ensure that the violations are documented by required or special monitoring reports which confirm that the discharge limits for a parameter were exceeded either 3 consecutive months or any 4 months during the past year.~~

~~E. The Board may designate a project as Priority Class D if any 1 of the following conditions exists:~~

~~1. The project will provide capacity required to serve existing needs;~~

~~2. The project is designed for wastewater reuse, to conserve water, or to recharge wastewater; or~~

~~3. The project is necessary to remedy interceptors which are overloaded.~~

~~F. The Board may designate a project which does not receive a designation pursuant to subsections (B) through (E) of this Section as Priority Class E, if the project is for future growth only or if the project has been financed from another source of long-term indebtedness.~~

R18-10-106. ~~Priority List Ranking Criteria~~ Repealed

~~A. The Board shall rank projects within priority classes using priority values obtained from the following formula:~~

~~PV = VF + CW + CI + AF~~
~~where:~~
~~PV = Priority Value~~
~~VF = Violation Factor~~
~~CW = Classification of Waters~~
~~CI = Conservation Index~~
~~AF = Affordability Factor~~

~~B. Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award Violation Factor points. The Board shall use documentation requirements specified under Priority Classes B and C as contained in R18-10-105(C) and R18-10-105(D) to assign Violation Factor points. VF points shall be awarded as follows up to a maximum of 30 points:~~

~~1. 15 points for nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species;~~

~~2. 10 points for Biochemical Oxygen Demand (BOD), Suspended Solids, or Phosphates; and~~

~~3. 5 points for pH, Turbidity, or Temperature.~~

~~C. The Board shall award points for either surface water or groundwater categories but not both. The most stringent protected use within each category shall be the sole determiner of the Classification of Waters. CW points are awarded as follows up to a maximum of 30 points:~~

~~1. For surface water, CW points shall be awarded for discharges into a water body assigned 1 of the following protected use classifications under R18-11-101:~~

~~a. 30 points for "full body contact" or "domestic water source." For purposes of this subsection, a project that is not within either of those classifications may receive 30 points if the discharge is into a water body classified as a "unique water" defined in R18-11-101;~~

~~b. 20 points for "aquatic and wildlife (cold water fishery)";~~

~~c. 15 points for "aquatic and wildlife" that is not a cold water fishery; or~~

~~d. 10 points for "incidental human contact".~~

~~2. For groundwater, CW points shall equal:~~

~~a. 30 points for discharges into an aquifer which serves as the sole source for a drinking water supply;~~

~~b. 20 points for discharges into an aquifer which provides part of a drinking water supply; or~~

~~c. 10 points for discharges into an aquifer which is not used as a drinking water supply.~~

~~D. The Board shall award Conservation Index points as follows:~~

~~1. 30 points if the project will replace an existing groundwater use by reclaiming, reusing, or recharging a major portion of wastewater consistent with state law;~~

~~2. 20 points if the project will reclaim, reuse, or recharge a major portion of wastewater consistent with state law;~~

3. ~~10 points if the project will productively recycle wastewater constituents or recover energy;~~
4. ~~0 points if the project will not reclaim, reuse, or recharge wastewater.~~

~~E.~~ ~~The Board shall award Affordability Factor points up to a maximum of 10 points as follows:~~

1. ~~10 points if the cost per household for prior capital improvements and the proposed project exceeds 1.75% of the median household income of the community; or~~
2. ~~5 points if the cost per household for operation, maintenance, prior capital improvements and the proposed project exceeds 1.5% of the median household income of the community.~~

R18-10-107. ~~Financial Capability Criteria~~ Repealed

~~A.~~ ~~The applicant shall obtain Board approval of its financial capability, using a format provided by the Authority, as part of the application process.~~

~~B.~~ ~~When determining an applicant's financial capability, the Board shall consider the applicant's past fiscal history in a format approved by the Board which is provided to the applicant. The applicant shall provide information about the cost of the project to be funded and the rate structure to pay for the project.~~

R18-10-108. ~~Environmental Review~~ Repealed

~~A.~~ ~~If applicable, the Department shall conduct an environmental review pursuant to this Section for the design or construction of treatment works in accordance with applicable federal and state law. As part of the application process, the Authority shall provide information on conducting an environmental review consistent with the Clean Water Act and A.R.S. Title 49.~~

~~B.~~ ~~An applicant may request, in writing, a categorical exclusion. If the Department determines that a categorical exclusion is warranted under this subsection, the project is exempt from the requirement of this Section.~~

1. ~~The Department shall grant an exclusion if existing information and documents demonstrate that the project qualifies under 1 of the following categories:~~
   a. ~~Any project for which the planning is directed towards rehabilitation of existing facilities, functional replacement of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities which do not affect the degree of treatment or capacity of the existing facility;~~
   b. ~~Any project in sewered communities which is for minor upgrading and minor expansion of existing treatment works; or~~
   c. ~~Any project in unsewered communities where onsite technologies are proposed.~~
2. ~~The Department shall deny a request for exclusion if the project falls under any of the following categories:~~
   a. ~~The project will create a new, or relocate an existing, discharge to surface or ground waters;~~
   b. ~~The project will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters;~~
   c. ~~The project is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions;~~
   d. ~~The project is known or expected to directly or indirectly affect cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones; or other resource areas;~~
   e. ~~The project is known or expected to cause significant public controversy; or~~
   f. ~~The project is known or expected not to be cost effective.~~

~~C.~~ ~~If the Department determines that a categorical exclusion is not warranted under subsection (B) of this Section, or if no request for an exclusion is made, the applicant shall prepare an Environmental Information Document (EID). The EID shall be of sufficient scope to assist in the development of an environmental assessment (EA) under subsection (D) of this Section.~~

~~D.~~ ~~The EA may be conducted by the Department or by the applicant under the supervision of the Department and shall include consideration of all of the following factors:~~

1. ~~For the delineated planning area, the existing environmental conditions relevant either to the analysis of alternatives or to determining the environmental impacts of the proposed project;~~
2. ~~The relevant future environmental conditions of the delineated planning area, including the alternative of no action;~~
3. ~~The purpose and need for the project in the planning area, including the existing public health or water quality problems and their severity and extent;~~
4. ~~A comparative analysis of feasible alternatives, including no action, throughout the project area. The comparison shall focus on the beneficial and adverse consequences, both direct and indirect, on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation conducted under this Section. The comparison shall also include an analysis of all of the following factors:~~
   a. ~~Land use and other social parameters, including recreation and open space considerations;~~
   b. ~~Consistency with population projects used to develop state implementation plans under the Clean Air Act, 42 U.S.C. 7401 - 7626;~~
   c. ~~Cumulative impacts, including anticipated community growth within the project study area; and~~
   d. ~~Other anticipated public works projects, including coordination with such projects;~~
5. ~~A full range of relevant impacts of the project, including any irreversible or irretrievable commitments of resources to the project and the relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity; and~~
6. ~~Proposed structural and nonstructural measures to mitigate or eliminate adverse effects on the human and natural environments. Among other measures, structural provisions include changes in project design, size, and location; and nonstructural provisions include staging facilities, monitoring and enforcement of environmental rules, and local commitments to develop and enforce land use rules.~~

~~E.~~ ~~Upon completion of the EA required by subsection (D) of this Section, the Department shall determine whether an environmental impact statement (EIS) is necessary.~~

1. The Department shall prepare an EIS pursuant to subsection (F) of this Section if any of the following conditions exist:
   a. The project is known or expected to have a significant adverse effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions;
   b. The project is known or expected to directly or indirectly adversely affect recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones, or other resource areas;
   c. The project is likely to cause significant public controversy or is known or expected not to be cost effective; or
   d. The project discharges into a body of water where the present protected or designated use is not being met or is being challenged as inadequate to protect existing uses, and the discharge will not be of sufficient quality or quantity to meet the requirements of these uses.
2. If the Department determines pursuant to paragraph (1) of this subsection that an EIS is not necessary, the Department shall issue a finding of no significant impact (FNSI). The FNSI shall be accompanied by a finalized EA. Upon issuance of the FNSI, the project may proceed under the other requirements of this Article.

F. An EIS required by subsection (E)(1) of this Section shall be prepared as follows:
1. The Department shall first prepare and distribute a Notice of Intent;
2. As soon as possible after the publication of the Notice of Intent required by paragraph (1) of this subsection, the Department shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the scope of the EIS shall be determined by considering a number of factors, including all of the following:
   a. The significant issues to be analyzed in depth in the EIS;
   b. The preliminary range of alternatives to be considered;
   c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties;
   d. The method for EIS preparation and the public participation strategy; and
   e. The relationship between the EIS and the completion of the facility plan required under R18-10-110(H) and any necessary coordination between the preparers of both documents;
3. Upon completion of the scoping process described in paragraph (2) of this subsection, the Department shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may also be addressed, or others eliminated, and the reasons documented as part of the EIS; and
4. After the analysis of issues is conducted pursuant to paragraph (3) of this subsection, the Department shall issue a draft EIS for public comment. Following public comment pursuant to subsection (I) of this Section, the Department shall prepare a final EIS, consisting of all of the following:
   a. The draft EIS;
   b. Comments received on the draft EIS;
   c. A list of persons commenting on the draft EIS;
   d. The Department's responses to significant comments received;
   e. A determination of consistency with the Certified Water Quality Management Plan; and
   f. Any other information added by the Department.

G. After a final EIS has been issued under subsection (F) of this Section, the Department shall prepare and issue a record of decision (ROD) containing the Department's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include mitigation measures derived from the EIS process. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.

H. Any project awaiting financial assistance which has a five or more year old categorical exclusion, FNSI, or ROD under this Section shall be subject to an environmental re-evaluation. The Department shall re-evaluate the project, environmental conditions, and public views and, in writing, either reaffirm or modify its original decision. Any new information used by the Department in making its determination shall be included.

I. Public notice and participation under this Section shall be conducted as follows:
1. If a categorical exclusion is granted under subsection (B) of this Section, the Department shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned;
2. If a FNSI is issued under subsection (E)(2) of this Section, the Department shall provide public notice pursuant to A.A.C. R18-1-401(A) that the FNSI is available for public review. The notice shall provide that comments on the FNSI may be submitted to the Department for a period of 30 days from the date of publication of the notice. If no comments are received, the FNSI shall immediately become effective;
3. If a Notice of Intent is prepared and distributed under subsection (F)(1) of this Section, the Department shall publish it as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned;
4. If a draft EIS is issued under subsection (F)(4) of this Section, the Department shall provide public notice pursuant to A.A.C. R18-1-401(A) that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Department for a period of 30 days from the date of publication of the notice. In addition, if the Department determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comment pursuant to A.A.C. R18-1-401(B);
5. If the Department reaffirms or revises a decision pursuant to subsection (H) of this Section, the Department shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned; and
6. When public notice is required under this subsection, the Department shall also provide written notice to the

~~applicable Designated Water Quality Management Planning Agency.~~

R18-10-109. ~~Application Process~~ Repealed

~~A. Governmental units shall apply to the Board for each type of financial assistance on forms provided by the Board. Applications shall be made at times specified by the Board in special mailings or in the Intended Use Plan.~~

~~B. The Board shall determine when an application is complete and correct. In making the determination, the Board shall consider the application form and supporting documents if they comply with R18-10-103.~~

~~C. After a determination has been made that an application is complete and correct pursuant to subsection (B) of this Section, the Authority may enter into a financial assistance agreement with the applicant. The Authority shall enter into financial assistance agreements consistent with the Priority List and the availability of money in the fund.~~

R18-10-110. ~~Federal Requirements~~ Repealed

~~A. The Board shall identify Federal requirements applicable to each project pursuant to the Clean Water Act.~~

~~B. If applicable, the applicant shall design a user charge system to produce adequate revenues for operation and maintenance, including replacement. The user charge system shall provide that a user discharging pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay proportionately for the increased cost. An applicant's user charge system, based on actual or estimated use of wastewater treatment services, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of treatment works within the applicant's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.~~

~~C. After a project is completed, the governmental unit shall use revenue from the project, including the sale of sludges, gases, liquids, crops, or revenue from leases, to offset the costs of operation and maintenance. The governmental unit shall proportionately reduce all user charges.~~

~~D. One or more municipal legislative enactments or other appropriate authority shall incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the applicant shall adopt user charge systems in accordance with this Section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.~~

~~E. The applicant shall demonstrate the legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of the treatment works throughout the applicant's jurisdiction. This demonstration shall include an explanation of the roles and responsibilities of the local governments involved, and the manner in which construction, operation, and maintenance of the facilities will be financed. The applicant shall provide a current estimate of the cost of the facilities, and a calculation of the annual costs per household. It shall also include a written certification signed by the applicant that the applicant has both analyzed the costs and financial impacts of the proposed facilities and has the capability to finance and manage their construction, operation, and maintenance in accordance with this Article.~~

~~F. The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment facility project.~~

~~G. First use and equivalency projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, and all other applicable federal laws.~~

R18-10-111. ~~Project Construction~~ Repealed

~~A. Construction of a wastewater treatment facility project shall conform to all of the following requirements:~~

~~1. The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:~~

~~a. An on-site inspection by the Department;~~

~~b. The development by the applicant or recipient of a sludge management use and disposal plan; and~~

~~c. A review of all set back requirements by the Department.~~

~~2. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:~~

~~a. All easements and rights-of-way have been obtained;~~

~~b. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq., and~~

~~c. All required approvals and permits have been obtained from the following entities:~~

~~i. The Department, including the requirements contained in 18 A.A.C. 9; and~~

~~ii. Applicable federal, state, and local authorities as related to:~~

~~(1) Leases;~~

~~(2) Zoning permits;~~

~~(3) Building permits;~~

~~(4) Flood plain approvals;~~

~~(5) Air quality permits; and~~

~~(6) Solid waste approvals.~~

~~3. During construction of wastewater treatment facilities, the recipient shall:~~

~~a. Conduct work in compliance with the requirements of 18 A.A.C. 9; and~~

~~b. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.~~

~~4. Upon project completion, all of the following requirements shall be satisfied:~~

~~a. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 9;~~

~~b. The recipient shall accept the project in writing;~~

~~c. Any required operation and maintenance manual shall be completed; and~~

~~d. As-built plans and specifications shall be submitted to the Department and the recipient.~~

~~5. One year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective actions.~~

~~B. The recipient shall construct a Nonpoint Source project in a manner consistent with the plan which is the basis of the project or as specified in the financial assistance agreement. In addition, the applicant or recipient shall obtain all necessary approvals and permits for any construction requiring approvals and permits.~~

R18-10-112. ~~Fund Disbursements and Repayments~~ Repealed

~~A. The Authority shall ensure that disbursements from the fund are consistent with the financial assistance agreement and incurred project expenses.~~

~~B. The Authority shall charge a late fee for any loan repayment 30 days past the due date and every 30 days thereafter. The Authority shall refer any loan repayment over 90 days past due to the Office of the Attorney General for appropriate action pursuant to A.R.S. § 49-375(J).~~

~~C. The recipient shall maintain a project account in accordance with generally accepted government accounting standards. After reasonable notice by the Board or EPA, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Article and Title VI of the Clean Water Act.~~

R18-10-113. ~~Fund Administration~~ Repealed

~~A. The Board may use up to 4% of all federal capitalization grant awards to pay the reasonable costs of both administering the fund and conducting activities under this Article.~~

~~B. The Board may also require a recipient to pay a proportionate share of the expenses of administering the fund. The recipient shall deposit these payments in an account separate from the fund and shall use them for payment of the reasonable costs of administering the fund in excess of the 4% limitation described in subsection (A) of this Section. The recipient may also use the payments as a state match.~~

R18-10-114. ~~Intended Use Plan and Interest Rate Determinations~~ Repealed

~~A. The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible political subdivision or eligible entity, name, type of project, type of financial assistance, amount of financial assistance, and interest rates to be charged. The Intended Use Plan shall also identify 1st use and equivalency projects. The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as 1 of the required documents to obtain a grant under Title VI of the Clean Water Act, the Intended Use Plan shall include such additional information as required.~~

~~B. In establishing interest rates for loans made under this Article, the Authority:~~

~~1. May use target interest rates in those years when the state match must be obtained by the sale of bonds provided that when target rates are used in an Intended Use Plan, both of the following requirements shall be met:~~
~~a. The target rates shall be identified as such; and~~
~~b. Actual rates shall be adopted by the Authority prior to the approval of any loan repayment agreements;~~
~~2. Shall consider the cost of any money used in the fund, prevailing market rates, the recommendations of financial advisors, and fund growth;~~
~~3. Shall not establish a rate which exceeds prevailing market rates for similar types of loans; and~~
~~4. Shall not establish a rate which is less than is needed to operate the fund at cost.~~

~~C. The Authority may offer a zero interest rate or an interest rate lower than that established pursuant to subsection (B) of this Section only when all of the following conditions are met:~~
~~1. The assistance is for a project with a priority class rating of A, B, or C, as determined pursuant to R18-10-105;~~
~~2. The applicant demonstrates that the project cannot proceed without a reduced interest rate; and~~
~~3. The reduced interest rate will not result in an operating loss to the fund.~~

R18-10-115. ~~Disputes~~ Repealed

~~A. Any party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken pursuant to this Article may file a formal letter of dispute with the Clerk. Within 30 days of receipt of a dispute letter, the Department shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.~~

~~B. Any party filing a dispute pursuant to subsection (A) of this Section that disagrees with a preliminary decision of the Department may file a formal letter of appeal with the Board, provided such letter is received by the Clerk not more than 15 days after the receipt by the party of the preliminary decision.~~

~~C. The Board shall issue a final decision on issues appealed to it pursuant to subsection (B) of this Section not more than 60 days after receipt of the appeal.~~